

Planning Commission Date: May 11, 2005

Item No.

MILPITAS PLANNING COMMISSION AGENDA REPORT

Category: Public Hearing

Report Prepared by: Troy Fujimoto

Public Hearing: Yes: X No:

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TITLE: **FAIRFIELD RESIDENTIAL DEVELOPMENT VESTING MAJOR TENTATIVE TRACT MAP (MA2005-4) SITE, ARCHITECTURE REVIEW (SZ2004-9) AND USE PERMIT NO. UP2005-3**

Proposal: A request to subdivide a parcel into two separate parcels, and construct two buildings containing a total of 481 multi-family residential units, and a request for exceptions to the R4-TOD development standards for setbacks, open space, and number of floors.

Location: Corner of Great Mall Parkway, Main, and Abel Streets

APN: 086-12-015, 016, 020

RECOMMENDATION: **Approve Site and Architecture Review and Use Permit requests and Recommend Approval of Vesting Major Tentative Tract Map and Owner Participation Agreement to the City Council**

Applicant: Fairfield Residential, 5510 Morehouse Drive #200, San Diego, CA 92121

Property Owner: George S. Abel, PO Box 53, Gonzales CA 93926

Previous Action(s): General Plan Amendment and Rezoning

Environmental Info: Midtown EIR

General Plan Designation: Multi-Family Very High Density Residential

Present Zoning: Multi-Family Very High Density (R4-TOD-S), with a Transit Oriented Development and S-Zone overlay

Existing Land Use: Vacant land

Agenda Sent To: Applicant and owner as noted above

Attachments:

- Tentative Map and Project Plans
- Alternative Fire Access
- Stormwater control plan, dated March 28, 2005

- Applicant letter of description (dated January 14, 2005)
- *Environmental Noise Study – Milpitas Midtown TOD*, dated December 8, 2004, addendum dated December 27, 2004, prepared by Shen Milsom Wilke
- *Burrowing Owl Survey Report*, dated November 15, 2004, prepared by Dean Carrier
- *Fairfield Residential Transportation Impact Analysis*, dated April 2005, prepared by Fehr & Peers Transportation Consultants
- *Draft Owner Participation Agreement*

PJ#3178

BACKGROUND

The subject property is located on the south side of Great Mall Parkway between South Abel and South Main Streets. The parcel is approximately 8.2 acres and is undeveloped.

Surrounding uses include the Montevista Apartments, Great Mall Shopping Center, Elmwood Correctional Facility, VTA park and ride facility and light rail station. Other uses include industrial uses to the east, commercial and residential uses to the south, and residential uses to the north and west. In addition, Penitencia Creek borders the site on the southern edge.

In 2002, as part of the Midtown Specific Plan, the General Plan designation changed from General Commercial to Multi-Family Very High Density and rezoned from Agriculture and General Commercial to Multi-Family Very High Density with a Transit Oriented Development Overlay (R4-TOD-S)

APPLICATIONS SUBMITTED

The applicant is requesting approval of a Vesting Major Tentative Tract Map, pursuant to Section XI-1-4.00 (Tentative Map) and Section XI-1-30.00 (Vesting Tentative Map) of the Subdivision Ordinance, to subdivide one parcel into two (2) separate parcels and create 481 condominium units. In addition, the applicant is requesting approval of an S-Zone application, pursuant to Section 42 (Site and Architecture Review) for the construction of two new multi-family buildings and related site improvements. The applicant is also requesting approval of a Use Permit, pursuant to Section 8.11 (Exceptions to R-4 Standards) and Section 57 (Use Permits) of the Zoning Ordinance for exceptions to the R-4 development standards for minimum and maximum setbacks, maximum number of building levels, and minimum usable open space per unit.

PROJECT DESCRIPTION

The applicant is proposing to develop a 481-unit multi-family condominium complex in two separate buildings. The site is proposed to be split into two separate stand-alone buildings, each on their own parcel. The west parcel will contain 319 units (206 one bedroom and 113 two bedroom units) and the east parcel will contain 162 units (97 one bedroom, 58 two bedroom, and 7 three bedroom units). The site will appear as one project as the architecture and style of both buildings will be similar to each other.

As part of the project, the applicant is proposing outdoor recreation areas, plazas, pool areas and barbecue amenities. In addition, both buildings will have gym and fitness equipment and a

business center for use by the tenants. The applicant is proposing to construct a public trail along the frontage of Penitencia Creek.

Site Layout and Access

The site will be split into two parcels, with the new property line running generally north to south through the site. Each building will be generally centered on its parcel. The site will contain the project driveway, guest parking, and an improved public trail at the southern end of the site. Each parcel will have a recreational area, which includes a pool area, fitness room and business center, all to be located at the southern end of the buildings, closest to the driveway.

Both buildings will have similar layouts. The parking garage will be structured and located in the middle of the building. The building will surround the parking structure and include "corridors" that extend out from the center of the building. Direct pedestrian access from the garage will be at four (4) locations for the west building and two (2) locations for the eastern building. The western building will have three elevators and the eastern building will have two elevators; both with staircases for multi-level access. Other exterior pedestrian access (from neighboring streets) will be spaced throughout the building.

Landscaping is proposed throughout the site with plaza areas, barbecue facilities, benches, trellises and monuments. Between the two buildings is a proposed landscaped promenade that will serve two purposes, one to provide resident and visitor to the buildings and the other to provide Fire Department access.

The proposed site layout will have three vehicular entrances. Two entrances will be located off of Abel Street, one near the creek channel and the other near Great Mall Parkway, and the third entrance will be off of Main Street. A new private road located along the north side of the creek channel will connect the Main Street and southern-most Abel Street entrance. The road will have separate driveways that lead to the individual parking garage for each site. The western site will have an additional access from the garage onto Abel Street.

Parking

There will be 748 on-site parking spaces; 493 spaces on the west side and 255 on the east side of the project. The majority of the parking is in the structured garages; the remainder will be at-grade parking off the driveway at the southern end of the site. Parking is classified in the table below on the following page. Each building, as proposed will have adequate parking to park the required resident and guest parking on their respective parcel.

Fairfield Parking Table					
	West Side		East Side		
	Covered (garage)	Uncovered on-site	Covered (garage)	Uncovered on-site	Guest Parking
Required Parking*					
One bedroom	247	0	117	0	
2 and 3 bedrooms	181	0	104	0	
Total Parking	428	0	221	0	99
Proposed	428		221	0	99

* Including 20% reduction allowed in TOD overlay

Building Architecture, Colors, and Materials

The residential buildings are proposed to be four stories, with a maximum height of 50 feet. As mentioned previously, the parking structures in the middle of the buildings will have heights up to 60 feet, with up to 6 levels.

The building architecture is contemporary with a mix of mansard style and flat roofs. The mansard style roofs have ceramic tile, while the building itself has a stucco finish. Various colors are used throughout the building to add interest and variety. Colors proposed include shades of whites, muted greens and grays as primary colors. Shades of brown-orange help to accent architectural projections on the building. The first level of the building uses a darker green and gray and emphasizes the base of the buildings. Other architectural features include French balconies, stoops, canopies, and metal railings.

Because the buildings are located within a flood zone area, the applicant is proposing to add approximately four (4) feet of fill to bring the buildings out of the flood zone area and prevent the requirement of costly flood insurance. This will add approximately three to four feet to the overall height of the proposed structures on the site.

Landscaping

Because of the high-density urban character, landscaping of this Midtown project is not provided in the same way as provided in suburban developments where large swaths of green, open space are common. Landscaping is incorporated throughout the site and used within enclosed and partially enclosed plaza areas. The site includes a mix of softscape and hardscape. Hardscape elements throughout the site include open plazas with benches and monuments, and trellises, chairs and benches in the pool area.

As part of the project, the applicant is proposing to improve the streetscape along the project's Main, Abel and Great Mall Parkway frontages. Landscaping will be installed between the

buildings and the public sidewalks to provide a natural buffer between the streets and the buildings.

The applicant is proposing a large variety of trees at the site that are mainly broadleaf and deciduous. The applicant is proposing palm trees to accent pedestrian accessways.

ISSUES

Potential Phasing

Staff is concerned that the project could potentially be constructed separately, as two stand alone projects, since the site will be subdivided. This could lead to the possibility that only half of the project is constructed with the other half following months or possibly years later, if at all. To minimize the chance that the City ends up with a half developed site in such a prominent location, *staff recommends* the project be conditioned that prior to the first phase of the project being finalized (occupancy granted), building permits be procured and construction be completed for the building slab on the second phase.

Use Permit

Pursuant to Section 8.11 (Exception to Standards) of the R4 district, exceptions to certain development standards may be approved by the Planning Commission through the approval of a Use Permit in accordance with Section 57 (Use Permits) of the zoning ordinance.

The applicant is requesting the following four (4) exceptions as follows:

1. Exceedance of maximum front yard setbacks.
2. Exceedance of minimum front yard setbacks.
3. Exceedance of number of floors.
4. An exception to the 200 square feet of usable open space requirement for each dwelling unit.

Use Permit Findings

Any approval of a Use Permit or Use Permit Amendment, requires that the Planning Commission make the following findings:

1. The proposed use is consistent with the Milpitas Zoning Ordinance.
2. The proposed use is consistent with the Milpitas General Plan.
3. The proposed use, at the proposed location will not be detrimental or injurious to property or improvements in the vicinity nor to the public health, safety, and general welfare.

In addition to the above findings, two additional findings are required to be made by the Planning Commission prior to approval of any exceptions to the development standards for an R-4 project in the Midtown Area:

1. The exceptions meet the design intent identified within the Specific Plan and do not detract from the overall architectural, landscaping, and site planning integrity of the proposed development.

2. The exceptions allow for a public benefit not otherwise obtainable through the strict application of the specified standard.

The following sections explain how these findings can be made for the proposed project, as conditioned.

Exceptions (Use Permit)

The following are the development exceptions that the applicant is requesting as part of the application.

Setbacks

The following table illustrates the applicants' request of exceptions to setbacks on the site:

Building	Setback Required	Proposed (Exception Request)
West Building	Front yard setback of 8-15 feet from back of sidewalk	Varies from 3 to 70 feet
East Building	Front yard setback of 8-15 feet from back of sidewalk	Varies to 70 feet

The front yard exception for both buildings fronting Great Mall Parkway is, in part, due to the curvature of the street. Because the buildings are rectangular to take advantage of symmetry and use of interior space, the building does not follow the curve of the road. This results in the building setback varying up to 50 feet.

The setbacks on the frontages that face Main and Abel Streets vary greatly because of the design of the buildings. The buildings' focus is on Great Mall Parkway. Thus, the building sides face Main and Abel Street. The design of the buildings' include "wings" off of the center portion of the building with landscaped courtyards in between the wings. Along Abel Street, a portion of the building that narrows to three feet does not pose a problem, since on top of the three foot setback is a 10-foot wide sidewalk, thus, a visual 13-foot setback. Since this only occurs at the very corners of the building it is not a long stretch of 3-foot setback.

With the parking garage centered in the middle of the building, bringing the building back to be in conformance with development standards would more than likely result in less efficient use of spaces.

Usable Open Space

The proposed project is not able to meet the requirement for 200 square feet of usable open space for each unit. However, all of the open space provided, divided by the number of units will equate to more than 200 square feet of usable open space for each unit. Similar to other Midtown projects there is difficulty in incorporating 200 square feet of usable open space for each unit. The difficulty is that the dimensions are a function of unit width. For example, for a stacked unit, this could result in a balcony almost the entire width of the unit that projects 10 feet out from the building. Balconies this large would diminish the courtyard areas and detract from the overall design of the project. Since the project as a whole provides 25% of the site as open

space and some units have some usable open space through either a balcony or patio, staff recommends granting of this exception.

Number of Floors

The proposed garage for the west side of the project will be six levels at a height of 60 feet, this is below the maximum height of 75 feet. Additionally, the parking structure is encircled on all four sides by the residences, thus, will not be highly visible from surrounding views. The additional level of parking will free up more space at the ground level for open space and landscaping. Because of these factors staff is supportive of this exception for the project.

Conformance with the General Plan

The proposed Vesting Major Tentative Tract Parcel Map, S-Zone and Use Permit are consistent with the following sections of the General Plan.

Guiding Principles:

2.a-G-2 which encourages a relatively compact form, through the use of compact development and higher densities. The proposed density of the project, 49-54 DU/acre, is consistent with the General Plan designation.

2.a-G-3 which provides for a variety of housing types and densities to meet the demands of families. The project will provide one, two and three bedroom units to provide for varying family sizes. In addition, the project is a rental property, recently most of the projects before the City have been ownership.

2.a-G-5, a park-like setting through parks, trails, and greenway system. The project includes a new trail along the southern border of the project adjacent to Penitencia Creek.

2.a-G-6 which implements the Midtown Specific plan goals, policies, and development standards and creates high-density housing. The project is proposing high-density housing (density of over 41 DU/acre) along a transit corridor and meets the intent of the Midtown Specific Plan.

And Implementing Policies:

2.a-I-1 which states that new developments should not exceed the building intensity limits established in the General Plan. The proposed project does not exceed the 60 unit per gross acre density maximum of the Multi-Family, Very High Density Residential in the Transit Oriented Overlay land use designation.

2.a-I-2 which promotes in-fill development in the incorporated city limits. The project will be an in-fill project locating on vacant land in the middle of developed areas of the City.

2.a-I-22 and 2.a-I-23 which encourages developing the Midtown area as an attractive and economically vital district that accommodates a mixture of housing within a system of landscaped boulevards, streets and pedestrian/bicycle linkages, all in conformance with the adopted design guidelines/requirements. The proposed project meets the intent of the Midtown Specific Plan and will bring a mixture of housing types to the Midtown area. In addition, the project incorporates a new linear park/greenway.

2.b-I-3 which encourages providing housing opportunities in Milpitas, the project is proposing to add 481 residential units within the City.

Conformance with the Zoning Ordinance

Pursuant to Section XI-10-8.05 of the Zoning Ordinance, the proposed project will create legal lots that conform with the development standards, parking, and affordable housing requirements of the Multi-Family Very High Density with a Transit Oriented Overlay "R4-TOD" District in the following ways:

Standards	Proposed	Complies
Height - 5 stories and 75 feet	4 residential levels - varies to 50 feet, 6 parking levels - varies up to 60 feet	No, see exceptions, use permit requested
Density - 41 to 60 DU/Acre	49 DU/Acre on east and 54 DU/Acre on west	Yes
Affordable Housing - 20% minimum goal	20% affordable	Yes
Front and street side setback - Min. 8 ft., Max 15 ft. from back of sidewalk	Varies between 3 feet and 70 feet	No, see exceptions, use permit requested
Rear setbacks - 10 feet minimum	Over 10 feet	Yes
Parking - 1.5 spaces for each 1-bedroom unit and 2 spaces for each 2-3 bedroom unit. Plus 15% for guest parking. 20% percent reduction allowed in TOD overlay district.	Minimum of 1.5 covered spaces for each 1-bedroom unit and 2 covered spaces for each 2-bedroom unit and greater, and 15 percent for guest parking, all located on-site. 20% reduction off the gross parking number.	Yes
Bicycle Parking - 5% of auto parking	Bicycle parking area proposed for each building in the garage.	Yes
Open Space - 25% of total site	Over 25%	Yes
200 square feet of usable open space per unit (on-site private park, recreation area)	Less than 200 square feet	No, see exceptions, use permit requested
Utilities - screened from views	Location of utilities not determined.	No, see issues section.

Conformance with the State Subdivision Map Act & Subdivision Ordinance

With respect to approving the subject application, the Subdivision Map Act defers to local ordinance. The City's Subdivision Ordinance requires design and improvement consistency with the General Plan. As previously covered in the conformance with the General Plan section, the proposed Vesting Major Tentative Tract Map is in conformance with the General Plan.

Conformance with the Midtown Specific Plan

All projects proposed within the Midtown area are subject to a Site and Architectural Review (S-Zone Review), in accordance with Chapter 42 of the City's Zoning Ordinance. In addition to the usual S-Zone process of reviewing projects for conformance with the City's General Plan and Zoning Ordinance, no S-Zone approval shall be granted by the City without the decision-making body making the following finding:

"The proposed project conforms to the intent and the specific requirements of the Midtown Specific Plan, including the Development Standards and Design Guidelines." (Midtown Specific Plan)

The project conforms with the following Goals and Policies as further described below.

Land Use

The project conforms with the Midtown Specific Plan's Land Use Goals 2, 3, and 4, and Residential Policies 3.2 and 3.4 through 3.7 in that it provides a higher density in the TOD overlay zone (over 50 DU/Acre) and a mix of new high density housing that addresses the small, medium and larger size families and the different affordability needs. The project is also convenient to transit facilities in its design and location.

Parks and Open Space

The proposed project is consistent with Park and Open Space Policies 3.23 through 3.25 as the project will provide parks at the 3.5-acre ratio and will pay in-lieu fees for any park land that it does not physically provide. In addition, the project is proposing the creation of trail area along Penitencia Creek in the area as noted in the Midtown Specific Plan adjacent to their project site.

Circulation

The proposed project is consistent with Circulation Goals 1 and 2 because it provides pedestrian and bicycle access throughout the project and also provides bicycle parking within the development. In addition, the project is located adjacent to light rail and is providing pedestrian access through the project to light rail.

The project itself is within a quarter of a mile of the existing light rail line. It is consistent with Circulation Policies 4.2, and 4.9 in that the project is providing convenient access to light rail. Also, a traffic report was completed for the project that analyzed the capacity of the existing network and the circulation of the site within the existing street network. It is also consistent with Policy 4.13 - a connected system of sidewalks and pedestrian paths that provides safe and convenient access, and policy 4.15 - public access for purposes of a trail network. Lastly, it is consistent with Policy 4.19 in that it proposes adequate off-street parking for the various uses.

Community Design

The proposed project is consistent with Community Design Goal 1, 3 and 4 in that the project proposal is of a high quality, is creating a high-density project compatible with nearby transit and is physically improving both Main and Abel Streets. As part of the project, **staff recommends** the project improve Main, Abel and Great Mall Parkway to be cohesive with Abel and Main streetscape improvements occurring just north of the site.

In addition, the project proposal includes open urban spaces (plazas). It is consistent with Community Design Policies 5.1 through 5.5 in that the project promotes walkability, improves pedestrian access throughout the project, and is a high quality project that meets Midtown design standards.

Utilities

The proposed project is consistent with Utility and Service Policy 6.1 – 6.6 in that the project is incorporating recycled water, is upgrading water and sewer facilities to serve the project, and there is adequate water and sewer capacity to serve the project. The project is consistent with Policy 6.7 – 6.9 as the project is incorporating storm water management design and equipment, as well as making necessary storm water drainage infrastructure to accommodate the project. The project is also consistent with Policies 6.10, 6.12, 6.13, 6.17, and 6.18 which relate to other utilities such as gas, electric and solid waste.

Public Services and Schools

Lastly, the project is consistent with Policy 6.19 and 6.20 which relate to fire, police and emergency services and planning for school facilities. As the project conforms to the Midtown Plan, safety services have been accommodated as identified. In addition, the project will be paying school impact fees as part of the building permit process to ensure that future demand will be satisfied.

Staff has also reviewed the project against the design guidelines of the Plan and has determined that, as conditioned, the project is in conformance with all applicable design guidelines. Thus, staff concludes the project is consistent with the intent and specific requirements of the Midtown Specific Plan.

Site Layout

The proposed layout maximizes density, provides for adequate access for emergency and service vehicles, provides pedestrian access and walkability throughout the site, and provides for building variety and interest along Great Mall Parkway, Abel and Main Streets.

The proposed site plan shows the incorporation of a trail along the southern boundary of the site, adjacent to Penitencia Creek. However, the project does not provide marked, direct pedestrian access to the new trail area. To promote pedestrian usage and safety, **staff recommends** the applicant provide a raised crossing of the access driveway at the southern end of the site for each building to reach the trail adjacent to Penitencia Creek.

The applicant is proposing to use the County corner parcel to provide Fire Department access for their site. While this parcel is proposed to be incorporated into the project, until it is, the applicant will have to provide an alternative fire access until the corner parcel is procured.

Building Architecture

The applicant is proposing four story buildings that incorporate various architectural treatments including trellises, balconies, and different window styles. Staff is concerned with the overall appearance of the building. While there are many positives associated with the proposal some modifications to the architecture are necessary to comply with the Midtown Design Guidelines and to improve the overall appearance of the project. To ensure that the project is in conformance with Midtown Design Guidelines, **staff recommends** the following modifications:

- ❑ To draw attention and announce the main walkway between the two buildings (off of Great Mall Parkway) an enhanced entry feature and embellishment of the building corners shall be incorporated into the project.
- ❑ The applicant shall improve the elevation facing Great Mall Parkway of the west building through the use of architectural enhancements, roof height changes or other appropriate modifications to provide increased interest and variety to this elevation.
- ❑ The interior corridors that have an opening facing the garage shall incorporate a clear barrier (plastic or glass) to allow light in, while keeping automobile fumes out.
- ❑ The applicant shall provide an increased presence of an entrance at the corner of Main and Great Mall Parkway to accommodate and provide convenient access for future tenants that use transit.
- ❑ The applicant shall incorporate additional exterior architectural enhancements such as sills, awnings, and the like.

Recreation Amenities

The applicant is proposing 481 residential units which are a mixture of 1, 2, and 3 bedroom units. With the multi-bedroom units, it is reasonable to expect that there will be a population of younger residents in the complex. The applicant has proposed a one piece climbing structure, which appears to be more appropriate for older children. **Staff recommends** a more appropriate type of play equipment be incorporated into the project for younger children, which shall be to the approval of the City.

The applicant is proposing recreation amenities throughout the site. In the plaza areas, barbecue and benches are proposed in this area. To make better use of these areas and to provide different amenities, **staff recommends** the applicant provide different and creative amenities in the plaza area between the two buildings that currently shows a barbecue facility.

The applicant is proposing a pool equipment enclosure in both pool areas. To ensure that the design of the enclosure fits well with the development and is of a high design quality, **staff recommends** detailed plans be reviewed and approved prior to construction.

Landscaping

The applicant is proposing landscaping with a mix of hardscape and softscapes which provides an urban feel to the site. While the proposed landscaping plan shows tree species and locations, it does not show details for other landscaping. As such, **staff recommends** that prior to building permit, detailed landscaping plans be submitted to the City for review and approval.

To ensure that the landscaping has the best long-term growing environment possible, especially in tighter landscape areas, **staff recommends** the project incorporate the use of structural soil in landscape areas that have tight spaces (less than 6 feet in width).

The Midtown guidelines recommend that unit pavers be used for walkways throughout the site. Incorporating unit pavers adds interest to the sidewalks and provides some infiltration of stormwater into the ground. As such, **staff recommends** that unit pavers be interspersed along walkways throughout the site and at key intersection points and gathering places.

Additional **staff recommendations** in regards to landscaping include:

- ☐ No bollards are to be used to obstruct access to fire lanes.
- ☐ Provide accent trees at all vehicular entrances into the project site.
- ☐ Support structures shall be provided for all vines and climbing plant material to ensure upright growth.
- ☐ Structural soil shall be used for all landscaping in the public right-of-way.
- ☐ Fences used throughout the site shall include vertical elements to break and vary the horizontal elevation lines.
- ☐ All tree specimens except for the eucalyptus trees shall be of a 24-inch box size or greater.

Lighting

The applicant has proposed different lighting standards for the site. There is pedestrian scale lighting, including bollards along walkways and parking lot lighting. To review the effectiveness of the lighting provided on the site, staff required a photometric plan to be submitted to ensure that the site was providing adequate lighting. Based on the plan, there are areas of the site that are dark with a reading of 0.0. In addition, certain areas of the plan are inconclusive because the readings stop short. To ensure that there is adequate lighting at the site, **staff recommends** the applicant provide a revised lighting plan that includes up to 50 feet off of the project site and light measurements from every outdoor area of the site plan. Adjustments to lighting will be made according to this revised plan.

Solid Waste

As part of the solid waste facilities for the project, the applicant is proposing to have garbage chutes and bins within the project, with the storage of the bins in the parking garage. During pick up days, the applicant is proposing to wheel the bins out to the surface parking lot for pick-up and will subsequently take the carts back into the garage once pick-up has occurred. The applicant has not yet identified a location where the temporary staging of the garbage bins will occur. In addition, staff is concerned about the potential amount of time that the bins could be left out in the open. Thus, **staff recommends** the applicant locate areas (one for each building) where solid waste pick-up will occur and implement solid waste "scout" truck service or another service that minimizes the amount time that garbage bins are left out for pickup.

Stormwater Runoff

The applicant has submitted a stormwater control plan for the site to demonstrate compliance with State C.3 (stormwater) regulations.

To comply with C.3 requirements, the applicant has incorporated various measures and equipment into the project. The site is broken up into five (5) distinct areas, with each area offering a stormwater control solution to accommodate the stormwater flows. The majority of the southern portion of the site will accommodate stormwater flows through the use of a man-made landscape swale that will allow runoff to collect and be filtered in this area prior to discharge into the storm drain system. The remainder of the site will incorporate drainage into landscape areas and ultimately the use of mechanical equipment to filter stormwater runoff prior to discharge. The parking garage will include an oil-grease separator for an added means to ensure stormwater quality.

To allow the fine-tuning and detail modifications of the stormwater control plan, *staff recommends* prior to issuance of any project permits, the plan be completed to the approval of the City.

Park Fees

Residential developments in the R4 zoning district are required to provide park and open space at a ratio of 3 ½ acres per 1,000 people. As per Section 8.07-1 of the Zoning Ordinance, up to 43% of the public park and open space requirement may be provided in the form of private recreational space, which would include on-site usable common areas or private open space. Based on 481 residential units, the development would be required to provide the following:

2.58 public acres

1.95 private acres

4.53 park acres

The 1.95 private acres required on-site would be met with on-site amenities including balconies, patios, courtyards, recreation rooms, pool and spa areas, and other landscape areas. Part of the required public park acres would be satisfied with the dedication of 0.39 acres along Penitencia Creek. The applicant will improve this strip of land to create a trail connection between Main and Abel Streets for the future Penitencia Creek trail. Midtown Specific Plan Policy No. 3.25 allows an applicant to provide for the improvement of trails designated in the City's Trail Master Plan as credit towards the public acreage requirement. The project is providing 0.39 acres of improved trail along Penitencia Creek. The trail plan as submitted is conceptual. As such, *staff recommends* a detailed plan including amenities (benches, lighting, trees, etc.) befitting a trail to be submitted to the approval of the City.

The value of the remaining public park requirements of 2.19 acres is \$1,314,786 dollars. This is derived by multiplying 2.19 acres by the cost of improving one acre of trail in Milpitas (\$600,000). *Staff recommends* satisfaction of this obligation through dedication of acreage and/or improvements for park purposes equal to this amount in close proximity to the project. If however, it can be demonstrated to City staff that this is not possible, an in-lieu fee will be accepted prior to Final Map or building permit approval.

Long-term maintenance of these park improvements are covered in Condition No. 8 which requires participation by the property owner in a future Community Facilities District. The same condition was imposed on KB Home.

Fire Access

In order to satisfy Fire Department requirements, an acceptable fire access at the corner of Great Mall Parkway and Abel Street has yet to be demonstrated, but staff is confident that this can be resolved prior to building permit issuance through commitment to one of a few (on and off-site, plans of potential options are provided in the Commissioner's packet) options being discussed.

Affordable Housing

The R-4 zoning district has a minimum affordable housing goal of 20 percent. For the proposed project, this equates to 96 affordable housing units. The applicant is proposing to provide 8% low-income units (38 units) and 12% moderate-income units (58 units). To provide increased housing opportunities to families of very low-income levels, **staff recommends** the applicant provide 5% very low units (24 units) and 15% moderate units (72 units). To accommodate this request, the applicant will request entering into an Owners Participation Agreement (OPA) with the City for Redevelopment Agency financial assistance.

The City of Milpitas Five-Year Consolidated Plan (2002-2007) as required by U.S. Department of Housing and Urban Development (HUD), has identified over-crowding as a major impact on housing conditions within the City of Milpitas. Furthermore, the City has the largest household size (3.47) within Santa Clara County. Based on both of these factors, the City encourages and supports rental residential development with larger units with bedroom sizes to address the over-crowding conditions and developments to accommodate larger household sizes within the community. Thus, **staff recommends** the project provide a minimum of 24 three-bedroom units throughout the project, rather than the seven units that the applicant is proposing.

Very-low income households are defined at 50% of the County median income. Low-income households are defined at 80% of the County median, and moderate-income households are at 120% of the County median. Currently, the 2005 median income for Santa Clara County is \$105,500 for a family of four

Owner Participation Agreement (OPA)

On March 15, 2005, the Redevelopment Agency authorized staff to enter into negotiations with Fairfield Development for the development of a 481 multi-family rental unit development. The Redevelopment Agency assistance was authorized specifically for the development of 96 deed-restricted affordable housing units (24 very low and 72 moderate income).

In summary, the Owner Participation Agreement (OPA) commits a total of \$400,000 in affordable housing funds for the development of 24 very low-income and 72 moderate-income units. Funds are pledged in the form of a grant for payment by the Agency for development impact fees (Building Permit, Private Job Account, Park In-Lieu, Traffic Mitigation, and School Impact Fees).

The Owner Participation Agreement (OPA) will be reviewed by the Redevelopment Agency at its meeting on June 11, 2005. Included in the Planning Commission's agenda packet is a copy of the draft OPA for approval.

Noise

The project is located adjacent to Great Mall Parkway and the raised light rail tracks. In addition, the project is between Main and Abel Street. Because of its location amidst heavily used streets and the light rail, an acoustical study was submitted that analyzed the external and internal noise levels for the proposed project.

Exterior Noise

The report identified that exterior outdoor private living areas (rear yard areas, private balconies or patios) would be exposed to noise impacts due to the combined roadway and light rail noise. To reduce noise levels in these private outdoor living areas, **staff recommends** a noise barrier (for outdoor patio areas) be installed for all units facing Great Mall Parkway with a solid material of at least 4-lbs/square feet weight with no gaps, up to a height of four (4) feet.

Interior Noise

For residential uses, the *interior* noise level cannot exceed a 45 dBA Ldn (a 24 hour average, day-night noise level) standard. It is expected that common building construction in California will provide the necessary mitigation to bring the level below the 45 dBA Ldn limit. However, areas that could be susceptible to noise impacts are the windows and doors. To ensure that they do not allow noise levels to increase above 45 dBA Ldn, the noise study concluded and **staff recommends** that windows and doors (including the complete assembly with operable sash, not only the glass) on units that are in the 68 and above Ldn noise zone with direct line-of-sight to Great Mall Parkway shall have sound-isolating performance of at least STC31. In addition, because of the impact of the elevated light rail on upper levels of the building, the following requirements shall also apply for all units that have line-of-sight to the light rail:

- ❑ Zone 68 Ldn and above with line of sight to the light rail shall have window and door frame noise rating of STC 34.
- ❑ Zone 68 Ldn and above with no line of sight to the light rail shall have window and door frame noise rating of STC 31.
- ❑ Zone 67 Ldn and below with line of sight to the light rail shall have window and door frame noise rating of STC 31.
- ❑ Zone 67 Ldn and below with no line of sight to the light rail shall have standard window and door frame noise rating.

All other windows and doors in areas below 68 Ldn may have standard insulated windows and doors.

In addition, because these noise levels can only be achieved with windows closed, **staff recommends** that separate air ventilation to meet Title 24 fresh air requirements shall be required for all units in the project.

Transportation/Traffic

The proposed project will generate new trips impacting the area. As identified in the Midtown Specific Plan EIR, most traffic impacts cannot be mitigated over the long term. The City adopted EIR contained overriding considerations for these impacts. However, the Midtown EIR did identify that fair share contributions would be required for projects that impact intersections and roadways. In addition, any project that generates more than 100 peak hour trips, is required by the Congestion Management Program to complete a traffic impact analysis.

In the traffic report 19 intersections were evaluated in accordance with the Congestion Management Program during the AM and PM peak hours. The result of the study identified that the project will not result in any significant impact on the intersections. The City requires all projects within the Midtown area to make a "fair share" contribution for the cumulative traffic impacts generated by the project. Based on 237 trips as a result of the project, the Midtown-related traffic impact fee will be \$26,781.

In addition to the Midtown traffic impact fee, the City also has an impact fee for any project that impacts Montague Expressway. As part of the future widening of Montague Expressway, the city levies a fee on any project that adds new trips to the expressway. It is expected that this project will add 170 PM peak hour trips, equating to a share of \$153,510. Thus, *staff recommends* the applicant pay total traffic fees for the project totaling \$180,291 dollars.

Neighborhood/Community Impact

A neighborhood outreach open house was held with members of the community on April 21, 2005 at Zanker Elementary School. The majority of the people that attended the open house had positive comments related to the project. The one issue that was brought up was the impact on traffic in the area. In addition, staff has received one phone from a concerned citizen about the project in general and also mentioned potential traffic impacts. The previous traffic section covered these impacts and the project is providing fees to improve the overall flow in the area. In addition, the applicant is conditioned to provide street improvements on Main and Abel Streets, which will help traffic flow in the immediate area.

Hazardous Materials

As identified in the Midtown Specific Plan EIR, any development within 100 feet of any parcel identified on a list of hazardous material sites pursuant to Government Code Section 65962.5 or which has had previous land associated with hazardous materials shall perform a Phase I Environmental Site Assessment. The property is outside this distance, however, a Phase I study was still completed. The results of the study were that no current or historical recognized environmental conditions have been identified on the subject property. Based on the report no additional investigations are warranted at this time, and none are recommended.

Conformance with CEQA

The proposed project is exempt from further environmental review pursuant to Article 8, Section 65457 (CEQA exemption, Specific Plans) of Planning and Zoning law, in that it is a residential development that is consistent with a specific plan for which an environmental impact report (Midtown Specific Plan and associated EIR) has been certified after January 1, 1980.

RECOMMENDATION

Close the public hearing and recommend approval of the S-Zone, and Use Permit applications based on findings and special conditions listed below and recommend approval of the Vesting Major Tentative Tract Map to the City Council and the Owners Participation Agreement to the Redevelopment Agency.

FINDINGS FOR VESTING MAJOR TENTATIVE TRACT MAP (P-MA2005-4)

1. The proposed Vesting Major Tentative Tract Map is in conformance with the General Plan as it is subdividing land into two parcels and creating 481 residential multi-family condominium units to accommodate a high-density housing project.
2. The proposed Vesting Major Tentative Tract Map is in conformance with the Zoning Ordinance, by providing the minimum density and through the approval of exceptions to development standards.
3. The proposed Vesting Major Tentative Tract Map is consistent with the State Subdivision Map Act and the Subdivision Ordinance, as it is consistent with General Plan principles including:
 - a) Compact development and higher densities;
 - b) Variety of housing types;
 - c) Implementation of Midtown Specific Plan goals, policies and development standards.

It is also consistent with the following General Plan policies including:

- a) Compliance with building intensity limits;
 - b) Promoting in-fill development in the incorporated City limits;
 - c) Development of the Midtown area as an attractive and economically vital district.
4. The proposed project is exempt from further environmental review pursuant to Article 8, Section 65457 of the State Planning and Zoning Law.

FINDINGS FOR S-ZONE (P-SZ2004-9) AND USE PERMIT NO. P-UP2005-3

5. The proposed project is exempt from further environmental review pursuant to Article 8, Section 65457 of the State Planning and Zoning Law.
6. The proposed development is consistent with the City of Milpitas Zoning Ordinance in terms of land use and development standards for Multi-Family Very High Density zoning with a Transit Oriented Development Overlay because the proposed development is a high density (49-54 DU/acre) residential development that promotes walkability and the creation of a bicycle/pedestrian trail.
7. The proposed development is consistent with the City of Milpitas General Plan in terms of land use and density because the proposed project is a multi-family residential project with a proposed density ranging from 49 to 54 DU/acre.
8. As conditioned, the proposed residential development will not be detrimental or injurious to the public health, safety, and general welfare to future residents and to the surrounding

community because the project includes the construction of a high quality, high density use in a key piece of vacant land within the City limits.

9. As conditioned, the layout of the site, design of the proposed building, and landscaping are compatible and aesthetically harmonious with the surrounding area and will improve the aesthetics of the site.
10. The exceptions associated with the project meet the design intent of the Specific Plan by not adversely impacting the architecture, not exceeding overall height limits and providing ample open space on the site (meeting the 25% open space requirement).
11. The exceptions allow the project to utilize smart growth trends in the proposed project.

RECOMMENDED SPECIAL CONDITIONS FROM PLANNING DIVISION FOR VESTING MAJOR TENTATIVE TRACT MAP (P-MA2005-4)

1. **General** - This recommendation for approval is for a Vesting Major Tentative Tract Map to subdivide an approximate 8.2 acre site into 2 parcels. (P)
2. **General** - The proposed project shall be conducted in compliance with all applicable federal, state, and local regulations. (P)
3. **Traffic Impact Fees** - Prior to City approval of the final map, traffic impact fees totaling \$180,291 shall be submitted to the City.
4. **Park In-lieu Fees** - Prior to issuance of any building permits or final map approval, satisfaction of this obligation through dedication of acreage and/or improvements for park purposes equal to \$1,314,786 dollars this amount in close proximity to the project. If however, it can be demonstrated to City staff that this is not possible, an in-lieu fee will be accepted. (P)
5. **Encroachment Permit Agreement - Community Facilities District** - Prior to any occupancy the applicant shall enter into an Encroachment Permit Agreement, with the City for the purpose of maintaining the public improvements installed by the applicant within City right-of way, to City standards, in the following areas:
 - a) Both sides of Abel Street between Great Mall Parkway and Capitol Avenue.
 - b) The south side of Great Mall Parkway between Main and Abel Streets.
 - c) The west side of Main Street between Great Mall Parkway and Penitencia Creek.
 - d) Trail area along project frontage along Penitencia Creek

If the City forms a Community Facilities District for, among other purposes, the purpose of maintaining landscaping along the streets and trails as listed above, the encroachment permit agreement requirement will be removed. In the event that the City forms the district for such purposes, the applicant, on behalf of itself and its successors in interest, by accepting the permit to which this condition is attached hereby waives any rights it may have to protest its inclusion in the district the purpose of which includes the maintenance of the above areas. The applicant, on behalf of itself and its successors in interest, by accepting the permit to

which this condition is attached further waives any right it may have to protest or submit a ballot against the amount of the assessment, provided, however, that the foregoing waiver shall apply only to the extent that the assessment that would be imposed on the applicant's property does not exceed \$100,000 per year, without considering any inflation adjustment factor that may be contained in the assessment. In addition, the applicant, on behalf of itself and its successors in interest, agrees that in the event it fails to submit a ballot in favor of the district, the City may treat this failure to submit a ballot as the submission of a ballot in favor of the district.

As with all project conditions of approval, this condition shall run with the land and any subsequent landowners. (P)

RECOMMENDED SPECIAL CONDITIONS FROM ENGINEERING DIVISION FOR VESTING MAJOR TENTATIVE TRACT MAP (P-MA2005-4)

6. **General** - The issuance of building permits to implement this land use development will be suspended if necessary to stay within (1) available water supplies, or (2) the safe or allocated capacity at the San Jose/Santa Clara Water Pollution Control Plant, and will remain suspended until water and sewage capacity are available. No vested right to the issuance of a Building Permit is acquired by the approval of this land development. The foregoing provisions are a material (demand/supply) condition to this approval. (E)
7. **Utilities** - Prior to issuance of any building permits, developer shall obtain approval from the City Engineer of the water, sewer and storm drain studies for this development. These studies shall identify the development's effect on the City's present Master Plans and the impact of this development on the trunk lines. If the results of the study indicate that this development contributes to the over-capacity of the trunk line, it is anticipated that the developer will be required to mitigate the overflow or shortage by construction of a parallel line or pay a mitigation charge, if acceptable to the City Engineer. (E)
8. **Community Facilities District** - Prior to final map approval, the developer shall submit an executed petition to annex into and establish, with respect to the property, the special taxes levied by a Community Facility District (CFD) for the purpose of maintaining the public services. No final map will be approved without receipt of an executed petition for annexation and consent and waiver executed by the property owners for the CFD for the establishment of special taxes. The developer shall comply with all rules, regulations, policies and practices established by the State Law and/or by the City with respect to the CFD including, without limitation, requirements for notice and disclosure to future owners and/or residents. (E)
9. **Public Improvements** - Prior to final map approval, the developer shall obtain design approval and bond for all necessary public improvements along Main Street, Great Mall Parkway and Abel Street (entire width of the street) including but not limited to curb and gutter, pavement, raised medians on Able and Main Street, sidewalk, signage and striping, bus stops, signal modification, street lights, fire hydrants, storm drain, sewer and water services, as shown on the Engineering Services Exhibit "T" (dated 4/22/2005). Plans for all public improvements shall be prepared on Mylar (24"x36" sheets) with City Standard Title Block and submit a digital format of the Record Drawings (AutoCAD format is preferred)

upon completion of improvements. The developer shall also execute a secured public improvement agreement. The agreement shall be secured for an amount of 100% of the engineer's estimate of the construction cost for faithful performance and 100% of the engineer's estimate of the construction cost for labor & materials. (E)

10. **Development Fees** - Prior to building permit issuance, developer must pay all applicable development fees, including but not limited to, plan check and inspection deposit. These fees are collected as part of the secured public improvement agreement. (E)
11. **Grading Plan** - At the time of final map approval, the developer shall submit a grading plan and a drainage study prepared by a registered Civil Engineer. The drainage study shall analyze the existing and ultimate conditions and facilities. In addition, the proposed development within existing flood plains should not increase the 100-year water surface elevation on surrounding properties nor should it increase existing flooding. A flood plain analysis shall be prepared to delineate the post development flood plain depth and lateral extend. All studies shall be reviewed and approved by the City Engineer and the developer shall satisfy the conclusions and recommendations of the approved drainage study prior to final map approval. (E)
12. **C-3** - The developer shall comply with Regional Water Quality Control Board's C.3 requirements and implement the following: (E)
 - a) At the time of building permit plan check submittal developer shall submit a "final" Stormwater Control Plan and Report. Site grading, drainage, landscaping and building plans shall be consistent with the approved Stormwater Control Plan. The Plan and Report shall be prepared by a licensed Civil Engineer and certified that measures specified in the report meet the C.3 requirements of the Regional Water Quality Control Board (RWQCB) Order, and shall be implemented as part of the site improvements.
 - b) Prior to building permit issuance, the developer shall submit an Operation and Maintenance (O&M) Plan for the long-term operation and maintenance of C-3 treatment facilities.
 - c) Prior to Final inspection/occupancy permit issuance, the developer shall execute and record an O&M Agreement with the City for the operation, maintenance and annual inspection of the C.3 treatment facilities.
13. **Water Quality** - The U.S. Environmental Protection Agency (EPA) has empowered the San Francisco Bay Regional Water Quality Control Board (RWQCB) to administer the National Pollution Elimination Discharge System (NPDES) permit. The NPDES permit requires all dischargers to eliminate as much as possible pollutants entering our receiving waters. Construction activities, which disturb 1 acres or greater are, viewed as a source of pollution, and the RWQCB requires a Notice of Intent (NOI) be filed, along with obtaining an NPDES Construction Permit prior to the start of construction. A Storm Water Pollution Prevention Plan (SWPPP) and a site monitoring plan must also be developed by the applicant, and approved by the City prior to permit issuance for site clearance or grading. Contact the RWQCB for questions regarding your specific requirements at (800) 794-2482. For general information, contact the City of Milpitas at (408) 586-3329. (E)

14. **Flood** - The Flood Insurance Rate Map (FIRM) issued by the Federal Emergency Management Agency (FEMA) under the National Flood Insurance Program shows this site to be in Special Flood Hazard Zone AO (depth 1), therefore, floodproofing is required. Floodproofing can be accomplished by elevating the structure. Per Chapter 15, Title XI of Milpitas Municipal Code (Ord. No. 209.4) the lowest floor elevation (finish floor) of each structure shall be at least one foot above the BFE and the pad elevation shall be at or above the BFE, which is approximately one-foot above the highest adjacent grade. The structures pad(s) shall be properly designed by a registered civil engineer and compacted to meet FEMA's criterion. In addition, the pad(s) shall extend beyond the building walls before dropping below the base flood elevation, and it shall have appropriate protection from erosion and scour. The applicant's civil engineer shall complete and submit a FEMA Elevation Certificate to the City prior to final building inspection, certifying the "as built" lowest floor elevation. Forms are available in the Engineering Division. Additionally, applicant shall demonstrate that this development will not cause any significant increase in flood levels during the occurrence of the base flood discharge. Any trailers, modular buildings, or pre-manufactured dwelling units located on this site for periods of time greater than one year, shall be adequately anchored to resist flotation, collapse and lateral movements per Floodplain Management Regulations. Flood insurance is required for any construction that is financed by government-backed loans. (E)
15. **Maintenance** - Prior to final inspection by the Building Division and certificate of occupancy permit issuance of the last building, the developer shall establish a homeowner association. The homeowner association shall be responsible for the maintenance of the landscaping, walls, private streetlights, common area and private streets and shall have assessment power. This information shall be clearly included in the Conditions, Covenants, and Restrictions (CC&R) and recorded documents. The CC&R document shall be submitted for review and approval by the City Engineer. (E)
16. **Condominium Plans** - Prior to final inspection by the building division and certificate of occupancy issuance for the last phase of the residential units, the developer shall prepare and record condominium plans subject to City review. (E)
17. **Final Map** - The tentative map and final map shall designate all common lots and easements as lettered lots or lettered easements. (E)
18. **Drainage** - Show on the tentative map how the site will drain. Drainage facilities outletting sump conditions shall be designed to convey the 100-Year flows with provisions for emergency overland outlets and protect all buildings. (E)
19. **Easements** - The developer shall dedicate on the final map necessary public service utility easements, street easements and easements for water and sanitary sewer purposes. The developer shall also dedicate necessary public access and trail easement for the proposed public trail and vehicular access easement to Santa Clara Valley Water District for creek maintenance along Lower Penitencia Creek frontage, as shown on the Engineering Services Exhibit "T" (dated 4/22/2005). (E)
20. **Right-of-way** - Prior to final map approval, the developer shall dedicate adequate right of way for pedestrian purposes crossing the driveways. (E)

21. **Exhibit T** - Make changes as noted on Engineering Services Exhibit "T" (dated 4/22/2005) and submit a Mylar of the revised tentative map to the Planning Division within three weeks of this tentative map approval. No application for the review of the final map or improvement plans will be accepted until this condition is satisfied. (E)
22. **Digital Map** - Prior to recordation of the final map, the developer shall submit to the City a digital format of the final map (AutoCAD format). All final maps shall be tied to the North America Datum of 1983 (NAD 83), California Coordinate of 1983, zone 3. (E)
23. **Final Map** - The final map shall be recorded prior to issuance of any building permit (except for Grading). (E)
24. **Landscaping** - In accordance with Chapter 5, Title VIII (Ord. 238) of Milpitas Municipal Code, for new and/or rehabilitated landscaping 2500 square feet or larger the developer shall: (E)
 - a) Provide separate water meters for domestic water service & irrigation service. Developer is also encouraged to provide separate domestic meters for each tenant.
 - b) Comply with all requirements of the City of Milpitas Water Efficient Ordinance (Ord No 238). Two sets of landscape documentation package shall be submitted by the developer or the landscape architect to the Building Division with the building permit plan check package. Approval from the Land Development Section of the Engineering Division is required prior to building permit issuance, and submittal of the Certificate of Substantial Completion is required prior to final occupancy inspection.

Contact the Land Development Section of the Engineering Division at (408) 586-3329 for information on the submittal requirements and approval process.
25. **Standard Drawing** - The developer shall not obstruct the noted sight distance areas as indicated on the City standard drawing #405. Overall cumulative height of the grading, landscaping & signs as determined by sight distance shall not exceed 2 feet when measured from street elevation. (E)
26. **Utilities** - All existing on-site public utilities shall be protected in place and if necessary relocated as approved by the City Engineer. No permanent structure is permitted within City easements and no trees or deep-rooted shrubs are permitted within City utility easements, where the easement is located within landscape areas. (E)
27. **Trash Enclosures** - Prior to building final inspection/occupancy permit issuance developer shall construct trash enclosures to accommodate the required number of bins needed to serve this development. The proposed enclosure shall be designed per the Development Guidelines for Solid Waste Services and enclosure drains must discharge to sanitary sewer line. City review/approval is required prior to construction of the enclosure. (E)
28. **Solid Waste** - Applicant/property owner shall be responsible for the trash collection and recycling services account. Prior to occupancy permit issuance, the applicant shall submit evidence to the City that the following minimum refuse and recycling services have been subscribed with BFI for commercial services: (E)
 - a) Maintain an adequate level of service for trash collection.

- b) Maintain an adequate level of recycling collection.

After the applicant has started its business, the applicant shall contact BFI commercial representative to review the adequacy of the solid waste level of services. If services are determined to be inadequate, the applicant shall increase the service to the level determined by the evaluation. For general information, contact BFI at (408) 432-1234, x-264.

29. **Solid Waste** - Per Chapter 200, Title V of Milpitas Municipal Code (Ord. No. 48.7) solid waste enclosures shall be designed to limit the accidental discharge of any material to the storm drain system. The storm drain inlets shall be located away from the trash enclosures (a minimum of 25 feet). This is intended to prevent the discharge of pollutants from entering the storm drain system, and help with compliance with the City's existing National Pollution Discharge Elimination System (NPDES) Municipal permit. (E)
30. **Solid Waste** - Prior to any permit issuance the developer shall address the following waste handling concerns: (E)
 - a) Show/describe how both recycling and trash will be handled.
 - b) Show collection areas on each floor. Separate chutes will be required for recycling and trash.
 - c) Trash need to be compacted or the number bins to be collected will increase significantly. Front load compactor (3-CYD maximum) can be placed in the enclosures areas in the garage to be collected by the BFI scout truck. Handling of compacted waste by the HOA maintenance personnel is not feasible, as stated on the developer submittal letter, since the bins will be too heavy. The Recycling waste should not be compacted.
 - d) Show the staging area for the front load bins to be collected by the larger truck. No on-street collection is permitted
31. **Encroachment Permit** - Prior to any work within public right of way or City easement, the developer shall obtain an encroachment permit from City of Milpitas Engineering Division. (E)
32. **Fees** - The developer shall submit the following items with the building permit application and pay the related fees prior to final inspection (occupancy) by the Building Division: (E)
 - a) Water Service Agreement(s) for water meter(s) and detector check(s).
 - b) Sewer Needs Questionnaire and/or Industrial Waste Questionnaire.Contact the Land Development Section of the Engineering Division at (408) 586-3329 to obtain the form(s).
33. **Adequate Water** - Prior to building permit issuance developer shall submit an engineering report detailing how adequate water supply pressures will be maintained. Multistory buildings as proposed require water supply pressures above that which the city can normally supply. Additional evaluations by the applicant are required to assure proper water supply (potable or fire services). Contact the Utility Engineer at 586-3345 for further information. (E)

34. **Plans** - Prior to any building permit issuance, the developer shall submit construction plans to and obtain necessary permits from all affected agencies, including but not limited to PG & E and Santa Clara Valley Water District (SCVWD). (E)

RECOMMENDED SPECIAL CONDITIONS FOR S-ZONE (P-SZ2004-9) AND USE PERMIT NO. P-UP2005-3

35. **General** - This approval is for a 481-unit multi-family residential development in two buildings and Use Permit No. UP2005-3 to grant exceptions including exceedance of setbacks, number of building levels, and private usable open space. (P)
36. **General** - The proposed project shall be conducted in compliance with all applicable federal, state, and local regulations. (P)
37. **Phase** - Prior to occupancy of the first phase of the project, building permits shall be procured and construction begun (building slab be installed) on the second phase. (P)
38. **Architecture** - Prior to building permit issuance, permit plans shall incorporate the following modifications to the approval of the Planning Division. (P)
- a) An enhanced entry feature and embellishment of the building (east and west buildings) corners shall be incorporated in the project in the area between the two buildings at the Great Mall Parkway elevation.
 - b) The applicant shall improve the elevation facing Great Mall Parkway of the west building through the use of architectural enhancements, roof height changes or other appropriate modifications to provide increased interest and variety to this elevation.
 - c) The applicant shall provide an increased presence of an entrance at the corner of Main and Great Mall Parkway to accommodate and provide convenient access for future tenants that use transit.
 - d) The applicant shall incorporate additional exterior architectural building enhancements such as sills, awnings, and the like.
 - e) All windows shall be clear or "Special E". (P)
39. **Play Equipment** - Prior to building permit issuance, permit plans shall include play equipment for young children to the approval of the Planning Division on each parcel (both east and west building sites). (P)
40. **Sidewalk** - Prior to building permit issuance, plans shall show the continuation of the sidewalk condition along Abel and Great Mall Parkway to complete the pedestrian connection. Prior to occupancy, the sidewalk shall be in place. (P)
41. **Parking Structure Layout** - Prior to building permit issuance, permit plans shall include layouts of each level of the parking structure to ensure that the required parking is provided. (P)
42. **Barbecue** - Building permit plans shall show a barbecue facility that shall be provided on the eastern parcel of the project. (P)

43. **Pool Enclosure** - Prior to building permit issuance, details of the proposed pool equipment enclosure shall be reviewed and approved the Planning Division. (P)
44. **Landscaping** - Prior to building permit issuance, the following modifications shall be incorporated into the landscaping plan to the approval by the Planning Division: (P)
- a) Structural soil shall be used in landscape areas that have any dimension that is less than six (6) feet.
 - b) Structural soil shall be used in all landscape areas within the public right-of-way.
 - c) Unit pavers shall be used in key locations and pedestrian gathering areas.
 - d) No bollards are to be used to obstruct access to fire lanes.
 - e) Accent trees shall be used at all vehicular entrances into the project site.
 - f) Support structures shall be provided for all vines and climbing plant material to ensure upright growth.
 - g) All tree specimens except for the eucalyptus trees shall be of a 24-inch box size or greater.
 - h) Prior to issuance of building permit, plans shall show that all planter areas have an automatic, self-watering system installed.
45. **Trail Improvements** - Prior to building permit issuance, a detail plan of the new trail adjacent to Penitencia Creek shall be submitted and approved by the City. The plan shall include pedestrian scale amenities including trees, benches, pedestrian lighting and the like. (P)
46. **County Parcel** - No approval of improvements is granted for the County parcel (APN: 086-12-010). (P)
47. **Fire Access** – No fire access options provided in the plans are approved, as further information is required prior to City approval. (P)
48. **Noise** - Prior to building permit issuance, a four (4) foot tall noise barrier for outdoor patio/deck areas shall be incorporated into the project. (P)
49. **Noise** - Prior to building permit issuance, windows and doors (including the complete assembly with operable sash, not only the glass) on units that are in the 68 and above Ldn noise zone with direct line-of-site to Great Mall Parkway shall have sound-isolating performance of at least STC31. In addition, because of the impact of elevated light rail on upper levels of the building, the following requirements shall also apply for all units that have line-of-sight to the light rail:
- a) Units in zone 68 Ldn and above with line of sight to the light rail shall have window and door frame noise rating of STC 34.
 - b) Units in zone 68 Ldn and above with no line of sight to the light rail shall have window and door frame noise rating of STC 31.

- c) Units in zone 67 Ldn and below with line of sight to the light rail shall have window and door frame noise rating of STC 31.
- d) Units in zone 67 Ldn and below with no line of sight to the light rail shall have standard window and door frame noise rating.

All other windows and doors in areas below 68Ldn may have standard insulated windows and doors. (P)

- 50. **Noise** - Prior to building permit issuance, permit plans shall show that all units in the project shall include separate air ventilation to meet Title 24 fresh air requirements. (P)
- 51. **Downspouts** - Prior to building permit issuance, building permit plans shall include the locations of building downspouts to the approval of the Planning Division. If downspouts are exposed they shall be designed to blend with the building. (P)
- 52. **Bicycle Parking** - Prior to building permit approval, bicycle parking areas shall be noted on plans and shall demonstrate meeting the 5% bicycle parking requirement (24 spaces on the west parcel and 13 spaces on the east parcel). (P)
- 53. **Mechanical Equipment** - All mechanical equipment and boxes shall be screened from all views (public and private). (P)
- 54. **Stormwater** - All stormwater facilities (mechanical and non-mechanical) shall be maintained on an annual basis, in perpetuity, by the property owner. (P)
- 55. **Stormwater** - Prior to issuance of any project permits, the stormwater plan shall be approved by the City. (P)
- 56. **Stormwater** - Prior to building permit issuance, plans shall show that roof downspouts drain to landscape areas where possible. (P)
- 57. **Lighting** - Low-pressure sodium lamps shall not be used anywhere on the site. White light shall be used throughout the site. (P)
- 58. **Lighting** - Prior to building permit issuance, a revised lighting plan shall be provided that covers all open areas of the site and up to 50 feet off of the property. In addition, appropriate levels of lighting shall be provided along every pedestrian pathway on the site, no unlighted areas. (P)
- 59. **Solid Waste** - Prior to building permit issuance, two garbage pick-up locations (one for each building/parcel) shall be identified and designed to the approval of the City. (P)
- 60. **Solid Waste** - Prior to building permit issuance, the project shall implement solid waste "scout" truck service or another service that minimizes the amount time that garbage bins are left out for pickup to the approval of the City. (P)
- 61. **Signage** - No approval for signage is provided at this time. All signage will require further review and approval by the City, as per Section 3 of the Sign Ordinance. (P)
- 62. **BMP's** - During all construction activities on-site, the project applicant/developer shall adhere to the following Best Management Practices as suggested by BAAQMD: (P)

- a) Watering all exposed or disturbed soil surfaces, at least twice daily, as necessary to eliminate visible dust plumes;
 - b) Cover all trucks hauling soil, sand and other loose materials or require all trucks to maintain at least a 2 feet freeboard level within their truck beds;
 - c) Enclose, cover, water twice daily or apply (non-toxic) soil binders to exposed stockpiles of debris, soil, sand, or other materials;
 - d) Suspension of all earthmoving or other dust-producing activities or equipment during periods of high winds when watering cannot eliminate visible dust plumes;
 - e) Apply water 3 times daily or apply (non-toxic) soil binders on all unpaved access roads parking areas and staging areas at construction sites;
 - f) Sweep daily (with water sweepers) all paved access roads, parking areas and staging areas at construction sites;
 - g) Sweep streets daily with water sweeper if visible soil material is carried onto adjacent public streets;
 - h) Hydroseed or apply (non-toxic) soil stabilizers to inactive construction areas (previously graded areas inactive for 10 days or more).
 - i) Limit traffic speeds on unpaved areas to 5 mph.
63. **BMP's** - During construction, the developer/applicant shall adhere to the following Best Management Practices (BMPs) as suggested in the Santa Clara Valley Non-point Source Pollution Control Program's "Best Management Practices for Industrial Storm Water Pollution Control": (P)
- a) Store building materials under cover or in enclosed areas.
 - b) Before painting, spread a ground cloth to collect paint.
 - c) Mix paint indoors before starting work.
 - d) Keep paint buckets away from contact with storm water.
 - e) Capture any paint spills before they flow into a storm drain.
 - f) During painting cleanup use proper procedures and prevent paint from flowing into storm drains.
64. **Ground Disturbing** - Any future ground disturbing activities on the Project Site shall be monitored by a qualified archaeologist to ensure that the accidental discovery of significant archaeological materials and/or human remains is handled according to CEQA Guidelines § 15064.5 regarding discovery of archeological sites and burial sites, and Guidelines § 15126.4(b) identifying mitigation measures for impacts on historic and cultural resources. (Reference CEQA §§ 21083.2, 21084.1.) In the event that buried cultural remains are encountered, construction will be temporarily halted until a mitigation plan can be developed. In the event that human remains are encountered, the developer shall halt work in the immediate area and contact the Santa Clara County coroner and the City of Milpitas. The

coroner will then contact the Native American Heritage Commission (NAHC) which will in turn contact the appropriate Most Likely Descendent (MLD). The MLD will then have the opportunity to make a recommendation for the respectful treatment of the Native American remains and related burial goods. (P)

65. **Solid Waste** - Covered areas for trash receptacles or enclosed features to prevent direct contact with precipitation. (P)
66. **Pesticides** - Controlling herbicides, pesticides and fertilizer usage through the use of a licensed landscape maintenance company. (P)
67. **Pesticides** - The City Planning staff shall have approval authority for the installation of comparable substitute pest-resistant plant materials to satisfy the requirements of the approved landscape plan when the approved plants and materials are unavailable for installation, or when other unforeseen conditions prevent the exact implementation of the landscape plan. (P)
68. **Stormwater** - Prior to issuance of Certificate of Occupancy, the applicant shall submit a Stormwater Control Operation and Maintenance (O&M) Plan, acceptable to the City, describing operation and maintenance procedures needed to insure that treatment BMP's and other stormwater control measures continue to work as intended and do not create a nuisance (including vector control). The treatment BMP's shall be maintained for the life of the project. The stormwater control operation and maintenance plan shall include the applicant's signed statement accepting responsibility for maintenance until the responsibility is legally transferred. (P)
69. **Stormwater** - Prior to building, site improvement or landscape permit issuance, the building permit application shall be consistent with the applicant's approved Stormwater Control Plan and approved special conditions, and shall include drawings and specifications necessary to implement all measures described in the approved Plan. As may be required by the City's Building, Planning or Engineering Divisions, drawings submitted with the permit application (including structural, mechanical, architectural, grading, drainage, site, landscape and other drawings) shall show the details and methods of construction for site design features, measures to limit directly connected impervious area, pervious pavements, self-retaining areas, treatment BMP's, permanent source control BMP's, and other features that control stormwater flow and potential stormwater pollutants. Any changes to the approved Stormwater Control Plan shall require Site & Architectural ("S" Zone) Amendment application review. (P)
70. **Landscaping** - All landscaping shall be installed for each section of the project that is requesting an occupancy permit. (P)
71. **Fees** - If at the time of application for permit there is a project job account balance due to the City for recovery of review fees, review of permits will not be initiated until the balance is paid in full. (P)
72. **Fees** - If at the time of application for a certificate of occupancy there is a project job account balance due to the City for recovery of review fees, a certificate of occupancy shall not be issued until the balance is paid in full. (P)

73. **Three Bedrooms** - Prior to building permit issuance, building permit plans shall include a minimum of 24 three-bedroom units throughout the project. (H)
74. **Affordable Housing** - Prior to building permit issuance, the applicant shall provide proof of the provision of 5% of total units to be available at the very low affordability level, and 15% of the total units to be available at the moderate affordability level. (H)
75. **Affordable Housing** - Prior to the issuance of any permit, the applicant shall provide documentation to the approval of the City Attorney that the following 96 affordable housing units (20% of allowed 481 units) will be available at a housing cost affordable to very low and moderate-income households as noted in the matrix below:

Income Level	No. of Units	Unit Type
Very Low	24	Number of one and two bedroom units (TBD)
Moderate	72	Number of one, two and three bedroom units (TBD)

76. **Affordable Housing** - The applicant shall make at least 3 of the three bedroom units available to moderate income households. (H)
77. **Affordable Housing** - As part of the identified public benefit for this project, prior to issuance of building permits, the following conditions shall be met: (H)
- a) Prior to occupancy, the applicant shall provide to the City of Milpitas Redevelopment Agency, Executive Director, for review and approval, a dispersement plan exhibit illustrating the location of the affordable housing units within the development. The affordable housing units shall be dispersed equally throughout the development and shall contain the same architectural features, design and amenities as the fair market rate units in the development. (H)
78. **Affordable Housing** - Income eligibility for the required number of affordable units shall be determined pursuant to the California Health and Safety Code Sections 50079.5, 50093 and 50105, which provide that the very low limits established by the U.S. Department of Housing and Urban Development (HUD) are the state limits for that income category. (H)
79. **Affordable Housing** - The applicant and the City of Milpitas shall enter into Restriction Agreements that outline the provisions for maintaining the long-term affordability of the required affordable rental units. The Restriction Agreements shall be approved to form by the Milpitas City Attorney's Office, executed by the City Manager and recorded with the County of Santa Clara. (H)

80. **Affordable Housing** - The Restriction Agreements shall require that the long-term affordability of the rental housing units shall remain in effect for fifty-five (55) years. Any change to this requirement is subject to review and approval by the Milpitas City Council. (H)
81. **Affordable Housing** - The applicant shall work with the Housing Division staff in establishing and determining the waiting list of eligible residents that are qualified for the project. (H)
82. **Affordable Housing** - The established affordable rents for the rental apartment shall be pursuant to income eligibility provided by the California Health and Safety Code Sections 50079.5, 50093 and 50105 which provide the "very low" limits established by the U.S. Department of Housing and Urban Development (HUD) are the state limits for those income categories and State of California Redevelopment Agency Law. The final affordable rents established for the apartment units shall not exceed the maximum allowable rents for "very low" households as defined in the above code sections. Said rents shall be approved for consistency with the definitions by the Housing Division staff. (H)

(P) – Planning Division

(H) – Housing Division

(E) – Engineering Division

**CITY OF MILPITAS
APPROVED**

PLANNING COMMISSION MINUTES

May 11, 2005

**I.
PLEDGE OF
ALLEGIANCE**

Chair Lalwani called the meeting to order at 7:00 P.M. and led the Pledge of Allegiance.

**II.
ROLL CALL**

Present: Azevedo, Galang, Garcia, Lalwani, Mandal, Mohsin and Williams
Absent:
Staff: Heyden and Rodriguez

**III
PUBLIC FORUM**

Chair Lalwani invited members of the audience to address the Commission on any topic not on the agenda, noting that no response is required from the staff or Commission, but that the Commission may choose to agendize the matter for a future meeting.

Julie Cherry, 2312 Lacy Drive, with the Milpitas Alliance for the Arts and the Art in Your Park Project, has met with neighbors in the park and come up with an idea for art in their park. She explained that the Alliance raises the money to put the piece in their park. She showed the Commission three models created by different artists and asked for their opinion in determining which is the best one for the park.

**IV.
APPROVAL OF MINUTES
April 27, 2005**

Chair Lalwani called for approval of the minutes of the Planning Commission meeting of April 27, 2005.

There were no changes from staff.

Motion to approve the minutes as submitted.

M/S: Mohsin/Galang

AYES: 6

NOES: 0

ABSTENTIONS: 1 (Mandal) – Absent at the April 27th meeting.

**V.
ANNOUNCEMENTS**

Staff had no announcements.

Commissioner Mohsin announced that the Sunnyhills Youth Association is going to have a fundraiser on May 17th at the McDonalds on North Milpitas Blvd. from 5 to 8 p.m.

**VI.
CONFLICT
OF INTEREST**

Chair Lalwani asked if the Commission has any conflict of interest on tonight's agenda.

There were no Commissioners that identified a conflict of interest.

**VII.
APPROVAL OF
AGENDA**

Chair Lalwani called for approval of the agenda.

There were no changes from staff.

Motion to approve the agenda.

M/S: Galang/Mandal

AYES: 7

NOES: 0

VIII.
CONSENT CALENDAR
Consent Item Nos. 2, 3, 4, 5,
6, 7, 8, 9, 10 and 11

Chair Lalwani asked whether staff, the Commission, or anyone in the audience wished to remove or add any items to the consent calendar.

Tambri Heyden, Acting Planning and Neighborhood Services Director, pointed out that there was a handout distributed this evening pertaining to Agenda Item No. 5 (Use Permit No. UP2005-7). She explained that there are some business owners in the shopping center objecting to this request. Staff created a cover memo addressing the issues that have been changed and are not proposing any changes. Also for item No. 10, (Use Permit No. UP2005-9), there was a condition of approval added that reads as follows:

4. *During the hours of operation or whenever music is played, all doors and windows shall be closed to reduce any interfering noise to adjacent properties.*

Vice Chair Garcia requested that Item No. 5 (Use Permit No. UP2005-7) be taken off of consent.

Commissioner Williams requested that Item Nos. 7 (Use Permit Amendment No. UA2004-9 and "S" Zone Approval Amendment No. SA2004-91), 8 (Use Permit No. UP2005-8 and "S" Zone Approval Amendment No. SA2005-27) and 9 (Use Permit No. UA2005-5 and "S" Zone Approval Amendment No. SA2005-28) be removed from the consent calendar.

Chair Lalwani opened the public hearing on Item Nos. 2, 3, 4, 6, 10 and 11.

There were no speakers from the audience.

Vice Chair Garcia asked about Item No. 4 (Time Extension No. TE2005-1) and asked if there are substantial changes to the plan. **Troy Fujimoto, Acting Associate Planner** remarked that the changes from the plan only to apply to the conditions of the approval, which are the colors and the roof elevations. Vice Chair Asked if it will be coming back to the Planning Commission and Mr. Fujimoto remarked "No".

Ms. Heyden asked if the Commission desires a brief presentation or are their questions to be raised pertaining to the items taken off of the consent calendar. Vice Chair Garcia said that he wants to air out the presentation in public and Commissioner Williams noted that he has concerns and wants to add a condition pertaining to all three items.

Motion to close the public hearing on Consent Item Nos. 2, 4, 6 and 10 and continue Item Nos. 3 and 8 to the June 8, 2005 meeting.

M/S: Williams/Azevedo

AYES: 7

NOES: 0

Motion to approve the Consent Calendar on Consent Item Nos. 2, 4, 6, and 10 and continue Item Nos. 3 and 11 to the June 8, 2005 meeting.

M/S: Williams/Galang

AYES: 7

NOES: 0

- *2 VESTING MINOR TENTATIVE MAP NO. MI2004-2, SITE AND ARCHITECTURAL REVIEW NO. SZ2004-9 AND USE PERMIT NO. UP2005-3 (Continued from April 27, 2005):** A request to subdivide a parcel into two separate parcels, construct two buildings containing a total of 481 multi-family residential apartment units, and a request for exceptions to the R4-TOD development standards for setbacks, open space, and number of floors at the corner of Great Mall Parkway and Main and Abel Streets.
- *3 USE PERMIT APPROVAL AMENDMENT NO. UA2004-10, "S" ZONE APPROVAL AMENDMENT NO. SA2004-100 AND ENVIRONMENTAL IMPACT ASSESSMENT NO. EA2005-2 (Continued from April 27, 2005):** A request for approval to demolish four (4) existing church ancillary buildings (totaling 21,150 square feet), and construction of two (2) new ancillary buildings (totaling 46,350 square feet), with site modifications that include a parking reduction, removal of protected trees, and landscaping, located at 1000 South Park Victoria Drive.
- *4 TIME EXTENSION NO. TE2005-1:** A request for a one time 18-month time extension for a previously approved 5,000 square foot restaurant (use permit) and an 11,000 square foot, two story office building (S-Zone), with previously approved variances to development standards, at 750 E. Calaveras Boulevard.
- *6 USE PERMIT AMENDMENT NO. UA2005-4 AND "S" ZONE APPROVAL AMENDMENT NO. SA2005-25:** A request to replace an existing 10'-7" monument sign with 7' sign and other exterior site upgrades including repainting the canopy and building, replacing pump valences and other site signage at 1640 N. Milpitas Blvd.
- *10 USE PERMIT NO. UP2005-9:** A request to locate a music school located at 1209 S. Park Victoria Drive.
- *11 CONSIDER AERIAL STATION AND LINE SEGMENT ALTERNATIVE TO RETAINED CUT DESIGN FOR THE FUTURE MONTAGUE/CAPITOL BART FACILITY.**

IX. PUBLIC HEARING

1.

**VESTING MAJOR
TENTATIVE TRACT
MAP NO. MA2005-4, SITE
AND ARCHITECTURE
REVIEW NO. SZ2004-9
AND USE PERMIT NO.
UP2005-3**

Troy Fujimoto, Assistant Planner, presented a request to subdivide a parcel into two separate parcels and create 481 multi-family residential units, and a request for exceptions to the R4-TOD (Multi-Family Very High Density with a Transit Oriented Development Overlay) development standards for setbacks, open space, and number of floors at the corner of Great Mall Parkway and Main and Abel Streets and recommended the Commission approve Site and Architecture Review and Use Permit, recommend approval to City Council of Vesting Major Tentative Tract Map and Owners Participant Agreement. Mr. Fujimoto also recommended that the Commission approve the following modified special conditions:

- 4. Park and Open Space Requirement - Prior to issuance of any building permits or final map approval, satisfaction of this obligation shall be through dedication of acreage in close proximity to the project and/or improvements for park purposes equal to \$1,314,786. If however, it can be demonstrated to City staff that this is not possible, an in-lieu fee in this amount will be accepted. (P)*

73. *Three Bedrooms - Prior to building permit issuance, building permit plans shall include a minimum of 11 three-bedroom units throughout the project. (H)*
74. *Affordable Housing - Prior to building permit issuance, the applicant shall provide proof of the provision of 5% of total units to be available at the very low affordability level, 1% at the low affordability level, and 15% of the total units to be available at the moderate affordability level. (H)*
75. *Affordable Housing - Prior to the issuance of any permit, the applicant shall provide documentation to the approval of the City Attorney that the following 100 affordable housing units (20% of allowed 481 units) will be available at a housing cost affordable to very low and moderate-income households as noted in the matrix below:*

<i>Income Level</i>	<i>No. of Units</i>	<i>Unit Type</i>
<i>Very Low</i>	<i>24</i>	<i>Number of one and two bedroom units (TBD)</i>
<i>Low</i>	<i>4</i>	<i>Number of three bedroom units</i>
<i>Moderate</i>	<i>72</i>	<i>Number of one, two and three bedroom units (TBD)</i>

76. *Affordable Housing - The applicant shall make at least 3 of the three bedroom units available to moderate income households and 4 of the three bedroom units available to low income households. (H)*
83. *Modifications to Project: To accommodate the four additional 3-bedroom units, minor modifications (such as number of units, building architecture and footprint) to the project will be reviewed and approved by the Planning Division. (P)*

Vice Chair Garcia asked why is this project being separated into two separate parcels. Mr. Fujimoto deferred the question to the applicant.

Vice Chair Garcia asked how will the City manage the 100 units that are affordable. Mr. Fujimoto said that the Housing Division maintains the affordable housing units. The Housing Division, in conjunction with the applicant, ensures qualified people are in the units.

Vice Chair Garcia noted that under the park fees section, 1.95 acres includes the park, balconies, patios, recreation area, pool and spa. He asked if it is standard practice. Mr. Fujimoto replied that the ordinance allows staff to calculate a portion of the required park space, up to 43% of the Midtown Area as private open space.

Vice Chair Garcia noted that there would be insufficient on street parking around the project site and asked staff to clarify. Mr. Fujimoto responded that one of the goals of the Midtown Specific Plan is to provide higher density and promote pedestrian uses and alternative transit. It is a benefit that the project is located right next to the light rail station and park and ride. The Midtown Plan and Zoning Ordinance allow a reduction for parking because the project is located in the transit overlay district.

Vice Chair Garcia asked about special condition no. 8 which reads as follows:

**8 Community Facilities District - Prior to final map approval, the developer shall submit an executed petition to annex into and establish, with respect to the property, the special taxes levied by a Community Facility District (CFD) for the purpose of maintaining the public services. No final map will be approved without receipt of an executed petition for annexation and consent and waiver executed by the property owners for the CFD for the establishment of special taxes. The developer shall comply with all rules, regulations, policies and practices established by the State Law and/or by the City with respect to the CFD including, without limitation, requirements for notice and disclosure to future owners and/or residents. (E)*

Mr. Fujimoto replied that the Community Facility District is a condition of approval that the applicant will have to adhere to including maintaining all of their on-site improvements.

Commissioner Mandal asked if the construction of the two buildings would be phased. Mr. Fujimoto replied that staff was concerned that there would be phasing because of two separate parcels, however the applicant has made it clear that their intent is not to phase the project. Staff provided the following condition of approval:

**37 Phase - Prior to occupancy of the first phase of the project, building permits shall be procured and construction begun (building slab be installed) on the second phase. (P)*

Commissioner Mandal asked why staff is recommending that the 200 square foot density be waived. Mr. Fujimoto noted that it is a development standard for the R4 zoning district however with every project of higher density, none has been able to meet the 200 square foot standard in the Midtown area.

Commissioner Williams was concerned about traffic near the intersections of Abel and Main street because he lives in the area and many times cars make u-turns coming from Great mall parkway on the double line median onto Abel Street. He asked if staff has done any analysis following through with the recommendation from the traffic consultant to extend the median to prevent cars from making a left hand turn into the project from Abel near the Great mall Parkway intersection. Mr. Fujimoto pointed out that there are two accesses on Abel Street and one is closer to Great Mall Parkway. Staff is recommending that a median be constructed so that cars cannot make a left turn into the first driveway, however, the median will be extended the project length and there is a left turn pocket into the project with a signal light that cars will be able to use.

Commissioner Galang noted that the applicant is proposing three elevators at the western building and two elevators at the eastern building. He asked what type of elevator would be used. Mr. Fujimoto said that per the fire code at least one should be able to accommodate a stretcher.

Chair Lalwani invited the applicant to make a presentation.

Shon Finch, Applicant with Fairfield residential presented a PowerPoint presentation that showed photos of their interior units which included: 1) living space amenities such as crown molding and appliances, counter tops and flooring, 2) the community room which has a fire place and TV, 3) exercise facility, 4) courtyard and 5) swimming pool.

Denis Henmi, Architect, commended the city in creating the midtown plan because his firm's vision is to create an urban downtown core and promote public transportation. The design consultants have done the following for the Fairfield project:

- Providing pedestrian oriented access and circulation
- It is an open community, not a gated community
- Internal parking structures are covered by the homes
- On grade parking is minimized
- Numerous spaces for guest parking are provided along the creek which will also provide access to the hiking trail

In response to Commissioner Williams's comment regarding the left hand turn into the project from Abel near the Great Mall Parkway intersection. Mr. Henmi explained that the developer would install a median improvement to the left hand turn lane. The project is 8.2 acres with 481 units, a density of 58 units per acre with 649 resident spaces, 99 visitor spaces and 748 total spaces with an approximately 60 feet maximum height. His team has done a lot of research and came to the conclusion that parking should be at 1-½ spaces. again, the team doesn't want to promote a lot of cars, which is a goal of transit development. He pointed out that the interior spaces will have full appliance packages including a range, refrigerator, microwave, dishwasher and garbage disposal and will consist of high quality flooring, fixtures and lighting, crown molding, nine foot ceilings and prewired high speed fax/modem, data and telephone lines

Mr. Finch summed up that 20% of the units will be below market housing, the project is a transit oriented development and the goal is to reduce the reliance on autos, the right-of-way improvements and beautification will be provided by the developer along South Able, Great Mall Parkway and Main Street, the development will pay 1.3 million in city park fees and \$900,000 will be paid to MUSD. He also pointed out that Fairfield concurs with the condition of approval and also staff's modifications to the conditions of approval.

Commissioner Mandal thought that the rooms looked like luxury apartments and asked if the Fairfield rooms will look exactly like the photos in the PowerPoint presentation and Mr. Finch said yes.

Commissioner Williams asked staff how they would ensure that the 99 stalls for guest parking would be available and not being taken upon by those living at the complex.

Mr. Finch responded that Fairfield manages a significant amount of homes in the country and all problems are handled through management. Management makes sure the tenants do not exceed their limits. The goal of management is to encourage the tenants to want to live there and that includes making sure that the guest parking remains for guests.

Commissioner Williams asked if Fairfield has a successful track record and Mr. Finch said yes.

Commissioner Williams pointed out that he really likes the design because it has foliage that enhances the area. He asked if there would be a lot of surface lighting or pole lighting.

Mr. Finch explained that they need to meet criteria for a safe environment while not exceeding light standards so it spills out over the project and effects neighbors and traffic. They would include up lighting on the buildings, planting materials, pole lighting and lighting to illuminate the walkways and entry points.

Commissioner Galang asked about the elevators. He noted that last year behind Embassy Suites, the power went the power went out of his building and he heard a guy stuck inside the elevator. He called 911 and after 15 or 20 minutes they couldn't open the door. They asked him if he had the keys to the access door behind the elevator and he said no. He called property management and it took about 45 minutes before they called back. The janitor had the key for the door and arrived later. He is concerned in case a pregnant female or someone who was to have a heart attack would be stuck in the elevator.

Mr. Finch replied that the development would have full-time management staff on site 24 hours a day, and a manager will live on the complex. Also, people will be available during business hours with respect to emergency.

Mr. Henmi added that the elevators are hydraulic and in case of a failure, they will descend to the first floor and the doors will open.

Vice Chair Garcia asked what the logic is for breaking this project into two parcels. Mr. Finch said that it allows the developer to get two separate construction loans and for that staff made sure that they will be built both at the same time.

Vice Chair Garcia asked if the northwest corner of Abel and Great Mall will be funded by Fairfield and Mr. Fujimoto replied no and explained that when the city and Fairfield first met, they tried to secure that parcel from the County of Santa Clara.

Vice Chair Garcia asked how will the residents get access from the garage to the apartments. Mr. Finch explained that the levels of the garage match the levels of the housing, so if the resident exceed the fourth level of the garage, they would have to go down to where their house is located.

Vice Chair Garcia was surprised that it is not a gated community and asked what is the rationale. Mr. Finch said that they want to be a good neighbor and the gates do not accomplish that. It is a transit-oriented development and needs to be accessible to residents and the community.

Vice Chair Garcia asked if there are any extra security features. Mr. Finch replied that the public could access the open space area around the development but the living quarters, pool and fitness room are all secured.

Vice Chair Garcia asked if the elevation of the garage is at street level and if it will be built above flood level and Mr. Finch said yes.

Commissioner Mohsin asked what does zone 67 and 68 mean under the noise level section in the staff report. Mr. Fujimoto brought the Commissioner's attention to the acoustical study that was provided and showed that the lines going through represent zone 67 and zone 68 above the line.

Chair Lalwani asked if Zanier will be the elementary school for the project and Mr. Fujimoto said yes. Chair Lalwani asked if there will be a bus that will pick up the children and Mr. Fujimoto said he did not know.

Chair Lalwani asked if the residents walking to the light rail station will have to cross a minimum of two traffic lights and Mr. Fujimoto said yes.

Chair Lalwani asked if the pedestrian paths are wider than usual and Mr. Fujimoto replied that they are 10-foot standard.

Chair Lalwani asked how much rent would be charged for a one bedroom and Mr. Finch replied about \$1,500 for low rent and up to \$3,000 for the highest.

Chair Lalwani mentioned her concerns about the traffic. Mr. Fujimoto said that the traffic report did a study based on rush hour mornings and afternoons and areas that will be impacted are Abel and Great Mall parkway, however, improvements are being done in the Midtown area.

Commissioner Galang asked what are the requirements to rent a singly family home and what are the numbers of people that could live there and asked if pets are allowed. Mr. Finch said that small pets like a cat could be allowed for an additional deposit and typically management will limit, to the extent they can, on how many people could live under one roof depending on the number of bedrooms.

Vice Chair Garcia asked if RDA funds would be available to purchase the small parcel that Santa Clara County owns. Ms. Heyden replied that staff would be looking into that.

Chair Lalwani opened the public hearing.

There were no speakers from the audience.

**Close the public hearing on
Item No. 1**

Motion to close the public hearing.

M/S: Azevedo/Williams

AYES: 7

NOES: 0

Motion to approve vesting Major Tentative Tract Map No. MA2005-4, Site and Architecture Review NO. SZ2004-9 and Use Permit No. UP2005-3 with staff's modified special conditions and recommendations noted in the staff report.

M/S: Mandal/Williams

AYES: 7

NOES: 0

2.

USE PERMIT NO.
UP2005-7

Tambri Heyden, Acting Planning and Neighborhood Services Director presented Use Permit No. UP2005-7, a request to operate a restaurant, Jacko's Chops and Noodles, with 14 seats and beer and wine sales in an existing 1,248 square foot retail space at 228 Barber Lane and recommended approval with conditions.

Ms. Heyden pointed out that a letter was issued to staff on behalf of some concerned tenants from the Milpitas Square Shopping center who are concerned about the applicant moving in because of lack of parking space, refuse overload and grease trap overload. Staff responded to their concerns and tried to get them a copy of the letter, but was unable to reach them. With respect to parking, there are over 70 tenant spaces in the shopping center, many of which are restaurants. They think there is a lack of parking spaces due to conversion of the tenant space from retail to restaurant. Staff did a site visit during lunch hour, and found unoccupied parking spaces scattered throughout the site and also parking spaces provided by the City along Barber Lane. With respect to trash, staff has covered this issue in condition no. 12 that increases the number of BFI pick-ups from 4 to 5 a week.

Vice Chair Garcia asked if the other tenants comply with same number of pick-ups and Ms. Heyden said yes.

Ms. Heyden also pointed out that the tenants do not share grease traps and there is an outside agency that sees to that before a building permit is issued. Staff feels confident that the issues that have been raised will be resolved before the restaurant goes into business.

Vice Chair Garcia noted that his observations of parking during lunch and dinnertime are very busy. He circles the parking lot and never finds parking there and it is very frustrating. Ms. Heyden replied that most of the parking spaces could be found on Barber Lane.

Chair Lalwani asked what was there before and Mr. Fujimoto replied a retail space.

Commissioner Galang had questions about special condition no. 6 which reads as follows:

**6 The business owner shall hold training sessions to instruct their employees on the proper procedures in the handling and disposal of food items; the general maintenance and use of the compactor and any other procedures that would assist the business in complying with all state and local health and sanitation standards (refer to the County of Santa Clara Department of Environmental Health at (408) 729-5155 for their guidelines). (P)*

Commissioner Galang asked how many times are the training sessions held and if staff monitors the training. Mr. Fujimoto replied that trainings are held on an annual basis. The applicant submits a plan and shows what is covered in the training and usually conducts training when new employees are hired. Ms. Heyden added that the training is self-enforced and staff does not verify that the training has occurred as per the agreement.

Chair Lalwani opened the public hearing.

Close the public hearing on
Item No. 2

Motion to close the public hearing.

APPROVED
May 11, 2005

M/S: Garcia/Mohsin

AYES: 7

NOES: 0

Motion to approve Use Permit No. UP2005-7 with staff's special conditions and recommendations.

M/S: Garcia/Mohsin

AYES: 7

NOES: 0

3.

Ms. Heyden presented the following applications:

**1. USE PERMIT
AMENDMENT NO.
UA2004-9 AND "S" ZONE
APPROVAL
AMENDMENT NO.
SA2004-91;**

**2. USE PERMIT NO.
UP2005-8 AND "S" ZONE
APPROVAL
AMENDMENT NO.
SA2005-27;**

**3. USE PERMIT NO.
UA2005-5 AND "S" ZONE
APPROVAL
AMENDMENT NO.
SA2005-28;**

1. Use Permit Amendment No. UA2004-9 and "S" Zone Approval Amendment No. SA2004-91, a request to replace existing 30' freestanding pole sign with an 18' LED sign, rebuild both canopies with flat roofs and other exterior upgrades including replacing building and canopy signage, painting building and replacing pump valences at 1787 S. Main Street.

2. Use Permit No. UP2005-8 and "S" Zone Approval Amendment No. SA2005-27, a request to replace two existing monument signs with a new 12' internally illuminated monument sign and install other minor exterior modifications including exterior painting, landscaping, and canopy replacement located at 97 S. Abbott Avenue.

3. Use Permit No. UA2005-5 and "S" Zone Approval Amendment No. SA2005-28, a request to replace an existing pole sign with a new 12' internally illuminated monument sign and install other minor exterior modifications including exterior painting, landscaping, and a new canopy fascia located at 27 S. Park Victoria Drive.

Commissioner Williams had requested that Item Nos. 7, 8, and 9 be lumped together because he is concerned about the LED lighted sign. He noted that not too long ago, the sign ordinance was passed which stated that signs would not distract traffic in any way and felt that the LED signs is a new concept and will save the owners a lot of money, however, the sign will causes a distraction and would be a violation. He propose that a condition be added for these three permits to add that they would be in compliance to the sign ordinance so they cannot use it to make the lights blink.

Ms. Heyden noted that the existing sign code and the sign code that is currently being proposed is not specific about this issue, in fact the new proposal allows for more flexibility to review this on a case by case basis. She thought Commissioner William's idea was excellent and suggested the following new condition be added to all three use permit applications which reads as follows:

Prior to permit issuance, detailed information shall be submitted to staff regarding the light intensity levels and timing between changes in sign copy to ensure that the signage does not produce glare, distract motorists and pedestrians and appear to move or create the illusion of movement. (P)

Commissioner Williams was very happy with the added condition.

Chair Lalwani opened the public hearing.

There were no speakers from the audience.

APPROVED
May 11, 2005

Motion to close the public hearing.

M/S: Williams/Galang

AYES: 7

NOES: 0

Motion to approve Use Permit Amendment No. UA2004-9 and "S" Zone Approval Amendment No. SA2004-91; Use Permit No. UP2005-8 and "S" Zone Approval Amendment No. SA2005-27 and Use Permit No. UA2005-5 and "S" Zone Approval Amendment No. SA2005-28 with the modified special condition noted above.

M/S: Williams/Galang

AYES: 7

NOES: 0

**X.
ADJOURNMENT**

The meeting was adjourned at 8:40 p.m. to the next regular meeting of May 25, 2005.

Respectfully Submitted,

Tambri Heyden
Acting Planning and Neighborhood
Services Director

Veronica Rodriguez
Recording Secretary

FINDINGS AND RECOMMENDED CONDITIONS OF APPROVAL

VESTING MAJOR TENTATIVE MAP NO. MA2005-4

Application to create two parcels totaling 8.2± acres to accommodate 481 residential condominium units (Fairfield Midtown).

APN: 086-12-015, 016, 020

Planning Commission Meeting: May 11, 2005

FINDINGS FOR VESTING MAJOR TENTATIVE TRACT MAP (P-MA2005-4)

1. The proposed Vesting Major Tentative Tract Map is in conformance with the General Plan as it is subdividing land into two parcels and creating 481 residential multi-family condominium units to accommodate a high-density housing project.
2. The proposed Vesting Major Tentative Tract Map is in conformance with the Zoning Ordinance, by providing the minimum density and through the approval of exceptions to development standards.
3. The proposed Vesting Major Tentative Tract Map is consistent with the State Subdivision Map Act and the Subdivision Ordinance, as it is consistent with General Plan principles including:
 - a) Compact development and higher densities;
 - b) Variety of housing types;
 - c) Implementation of Midtown Specific Plan goals, policies and development standards.

It is also consistent with the following General Plan policies including:

- a) Compliance with building intensity limits;
 - b) Promoting in-fill development in the incorporated City limits;
 - c) Development of the Midtown area as an attractive and economically vital district.
4. The proposed project is exempt from further environmental review pursuant to Article 8, Section 65457 of the State Planning and Zoning Law.

RECOMMENDED SPECIAL CONDITIONS FROM PLANNING DIVISION FOR VESTING MAJOR TENTATIVE TRACT MAP (MA2005-4)

1. **General** - This recommendation for approval is for a Vesting Major Tentative Tract Map to subdivide an approximate 8.2 acre site into 2 parcels. (P)
2. **General** - The proposed project shall be conducted in compliance with all applicable federal, state, and local regulations. (P)
3. **Traffic Impact Fees** - Prior to City approval of the final map, traffic impact fees totaling \$180,291 shall be submitted to the City.
4. **Park and Open Space Requirement** - Prior to issuance of any building permits or final map approval, satisfaction of this obligation shall be through dedication of acreage in close proximity to the project and/or improvements for park purposes equal to \$1,314,786. If

however, it can be demonstrated to City staff that this is not possible, an in-lieu fee in this amount will be accepted. (P)

5. **Encroachment Permit Agreement - Community Facilities District** - Prior to any occupancy the applicant shall enter into an Encroachment Permit Agreement, with the City for the purpose of maintaining the public improvements installed by the applicant within City right-of way, to City standards, in the following areas:

- a) Both sides of Abel Street between Great Mall Parkway and Capitol Avenue.
- b) The south side of Great Mall Parkway between Main and Abel Streets.
- c) The west side of Main Street between Great Mall Parkway and Penitencia Creek.
- d) Trail area along project frontage along Penitencia Creek

If the City forms a Community Facilities District for, among other purposes, the purpose of maintaining landscaping along the streets and trails as listed above, the encroachment permit agreement requirement will be removed. In the event that the City forms the district for such purposes, the applicant, on behalf of itself and its successors in interest, by accepting the permit to which this condition is attached hereby waives any rights it may have to protest its inclusion in the district the purpose of which includes the maintenance of the above areas. The applicant, on behalf of itself and its successors in interest, by accepting the permit to which this condition is attached further waives any right it may have to protest or submit a ballot against the amount of the assessment, provided, however, that the foregoing waiver shall apply only to the extent that the assessment that would be imposed on the applicant's property does not exceed \$100,000 per year, without considering any inflation adjustment factor that may be contained in the assessment. In addition, the applicant, on behalf of itself and its successors in interest, agrees that in the event it fails to submit a ballot in favor of the district, the City may treat this failure to submit a ballot as the submission of a ballot in favor of the district.

As with all project conditions of approval, this condition shall run with the land and any subsequent landowners. (P)

RECOMMENDED SPECIAL CONDITIONS FROM ENGINEERING DIVISION FOR VESTING MAJOR TENTATIVE TRACT MAP (MA2005-4)

6. **General** - The issuance of building permits to implement this land use development will be suspended if necessary to stay within (1) available water supplies, or (2) the safe or allocated capacity at the San Jose/Santa Clara Water Pollution Control Plant, and will remain suspended until water and sewage capacity are available. No vested right to the issuance of a Building Permit is acquired by the approval of this land development. The foregoing provisions are a material (demand/supply) condition to this approval. (E)
7. **Utilities** - Prior to issuance of any building permits, developer shall obtain approval from the City Engineer of the water, sewer and storm drain studies for this development. These studies shall identify the development's effect on the City's present Master Plans and the impact of this development on the trunk lines. If the results of the study indicate that this development contributes to the over-capacity of the trunk line, it is anticipated that the developer will be required to mitigate the overflow or shortage by construction of a parallel line or pay a mitigation charge, if acceptable to the City Engineer. (E)
8. **Community Facilities District** - Prior to final map approval, the developer shall submit an executed petition to annex into and establish, with respect to the property, the special taxes

levied by a Community Facility District (CFD) for the purpose of maintaining the public services. No final map will be approved without receipt of an executed petition for annexation and consent and waiver executed by the property owners for the CFD for the establishment of special taxes. The developer shall comply with all rules, regulations, policies and practices established by the State Law and/or by the City with respect to the CFD including, without limitation, requirements for notice and disclosure to future owners and/or residents. (E)

9. **Public Improvements** - Prior to final map approval, the developer shall obtain design approval and bond for all necessary public improvements along Main Street, Great Mall Parkway and Abel Street (entire width of the street) including but not limited to curb and gutter, pavement, raised medians on Able and Main Street, sidewalk, signage and striping, bus stops, signal modification, street lights, fire hydrants, storm drain, sewer and water services, as shown on the Engineering Services Exhibit "T" (dated 4/22/2005). Plans for all public improvements shall be prepared on Mylar (24"x36" sheets) with City Standard Title Block and submit a digital format of the Record Drawings (AutoCAD format is preferred) upon completion of improvements. The developer shall also execute a secured public improvement agreement. The agreement shall be secured for an amount of 100% of the engineer's estimate of the construction cost for faithful performance and 100% of the engineer's estimate of the construction cost for labor & materials. (E)
10. **Development Fees** - Prior to building permit issuance, developer must pay all applicable development fees, including but not limited to, plan check and inspection deposit. These fees are collected as part of the secured public improvement agreement. (E)
11. **Grading Plan** - At the time of final map approval, the developer shall submit a grading plan and a drainage study prepared by a registered Civil Engineer. The drainage study shall analyze the existing and ultimate conditions and facilities. In addition, the proposed development within existing flood plains should not increase the 100-year water surface elevation on surrounding properties nor should it increase existing flooding. A flood plain analysis shall be prepared to delineate the post development flood plain depth and lateral extend. All studies shall be reviewed and approved by the City Engineer and the developer shall satisfy the conclusions and recommendations of the approved drainage study prior to final map approval. (E)
12. **C-3** - The developer shall comply with Regional Water Quality Control Board's C.3 requirements and implement the following: (E)
 - a) At the time of building permit plan check submittal developer shall submit a "final" Stormwater Control Plan and Report. Site grading, drainage, landscaping and building plans shall be consistent with the approved Stormwater Control Plan. The Plan and Report shall be prepared by a licensed Civil Engineer and certified that measures specified in the report meet the C.3 requirements of the Regional Water Quality Control Board (RWQCB) Order, and shall be implemented as part of the site improvements.
 - b) Prior to building permit issuance, the developer shall submit an Operation and Maintenance (O&M) Plan for the long-term operation and maintenance of C-3 treatment facilities.
 - c) Prior to Final inspection/occupancy permit issuance, the developer shall execute and record an O&M Agreement with the City for the operation, maintenance and annual inspection of the C.3 treatment facilities.
13. **Water Quality** - The U.S. Environmental Protection Agency (EPA) has empowered the San Francisco Bay Regional Water Quality Control Board (RWQCB) to administer the National Pollution Elimination Discharge System (NPDES) permit. The NPDES permit requires all

dischargers to eliminate as much as possible pollutants entering our receiving waters. Construction activities, which disturb 1 acres or greater are, viewed as a source of pollution, and the RWQCB requires a Notice of Intent (NOI) be filed, along with obtaining an NPDES Construction Permit prior to the start of construction. A Storm Water Pollution Prevention Plan (SWPPP) and a site monitoring plan must also be developed by the applicant, and approved by the City prior to permit issuance for site clearance or grading. Contact the RWQCB for questions regarding your specific requirements at (800) 794-2482. For general information, contact the City of Milpitas at (408) 586-3329. (E)

14. **Flood** - The Flood Insurance Rate Map (FIRM) issued by the Federal Emergency Management Agency (FEMA) under the National Flood Insurance Program shows this site to be in Special Flood Hazard Zone AO (**depth 1**), therefore, floodproofing is required. Floodproofing can be accomplished by elevating the structure. Per Chapter 15, Title XI of Milpitas Municipal Code (Ord. No. 209.4) the lowest floor elevation (finish floor) of each structure shall be at least one foot above the BFE and the pad elevation shall be at or above the BFE, which is approximately one-foot above the highest adjacent grade. The structures pad(s) shall be properly designed by a registered civil engineer and compacted to meet FEMA's criterion. In addition, the pad(s) shall extend beyond the building walls before dropping below the base flood elevation, and it shall have appropriate protection from erosion and scour. The applicant's civil engineer shall complete and submit a FEMA Elevation Certificate to the City prior to final building inspection, certifying the "as built" lowest floor elevation. Forms are available in the Engineering Division. Additionally, applicant shall demonstrate that this development will not cause any significant increase in flood levels during the occurrence of the base flood discharge. Any trailers, modular buildings, or pre-manufactured dwelling units located on this site for periods of time greater than one year, shall be adequately anchored to resist flotation, collapse and lateral movements per Floodplain Management Regulations. Flood insurance is required for any construction that is financed by government-backed loans. (E)
15. **Maintenance** - Prior to final inspection by the Building Division and certificate of occupancy permit issuance of the last building, the developer shall establish a homeowner association. The homeowner association shall be responsible for the maintenance of the landscaping, walls, private streetlights, common area and private streets and shall have assessment power. This information shall be clearly included in the Conditions, Covenants, and Restrictions (CC&R) and recorded documents. The CC&R document shall be submitted for review and approval by the City Engineer. (E)
16. **Condominium Plans** - *Prior to final inspection by the building division and certificate of occupancy issuance for the last phase of the residential units, the developer shall prepare and record condominium plans subject to City review.* (E)
17. **Final Map** - The tentative map and final map shall designate all common lots and easements as lettered lots or lettered easements. (E)
18. **Drainage** - Show on the tentative map how the site will drain. Drainage facilities outletting sump conditions shall be designed to convey the 100-Year flows with provisions for emergency overland outlets and protect all buildings. (E)
19. **Easements** - The developer shall dedicate on the final map necessary public service utility easements, street easements and easements for water and sanitary sewer purposes. The developer shall also dedicate necessary public access and trail easement for the proposed public trail and vehicular access easement to Santa Clara Valley Water District for creek maintenance

along Lower Penitencia Creek frontage, as shown on the Engineering Services Exhibit "T"(dated 4/22/2005). (E)

20. **Right-of-way** - Prior to final map approval, the developer shall dedicate adequate right of way for pedestrian purposes crossing the driveways. (E)
21. **Exhibit T** - Make changes as noted on Engineering Services Exhibit "T"(dated 4/22/2005) and submit a Mylar of the revised tentative map to the Planning Division within three weeks of this tentative map approval. No application for the review of the final map or improvement plans will be accepted until this condition is satisfied. (E)
22. **Digital Map** - Prior to recordation of the final map, the developer shall submit to the City a digital format of the final map (AutoCAD format). All final maps shall be tied to the North America Datum of 1983 (NAD 83), California Coordinate of 1983, zone 3. (E)
23. **Final Map** - The final map shall be recorded prior to issuance of any building permit (except for Grading). (E)
24. **Landscaping** - In accordance with Chapter 5, Title VIII (Ord. 238) of Milpitas Municipal Code, for new and/or rehabilitated landscaping 2500 square feet or larger the developer shall: (E)
 - a) Provide separate water meters for domestic water service & irrigation service. Developer is also encouraged to provide separate domestic meters for each tenant.
 - b) Comply with all requirements of the City of Milpitas Water Efficient Ordinance (Ord No 238). Two sets of landscape documentation package shall be submitted by the developer or the landscape architect to the Building Division with the building permit plan check package. Approval from the Land Development Section of the Engineering Division is required prior to building permit issuance, and submittal of the Certificate of Substantial Completion is required prior to final occupancy inspection.

Contact the Land Development Section of the Engineering Division at (408) 586-3329 for information on the submittal requirements and approval process.

25. **Standard Drawing** - The developer shall not obstruct the noted sight distance areas as indicated on the City standard drawing #405. Overall cumulative height of the grading, landscaping & signs as determined by sight distance shall not exceed 2 feet when measured from street elevation. (E)
26. **Utilities** - All existing on-site public utilities shall be protected in place and if necessary relocated as approved by the City Engineer. No permanent structure is permitted within City easements and no trees or deep-rooted shrubs are permitted within City utility easements, where the easement is located within landscape areas. (E)
27. **Trash Enclosures** - Prior to building final inspection/occupancy permit issuance developer shall construct trash enclosures to accommodate the required number of bins needed to serve this development. The proposed enclosure shall be designed per the Development Guidelines for Solid Waste Services and enclosure drains must discharge to sanitary sewer line. City review/approval is required prior to construction of the enclosure. (E)
28. **Solid Waste** - Applicant/property owner shall be responsible for the trash collection and recycling services account. Prior to occupancy permit issuance, the applicant shall submit evidence to the City that the following minimum refuse and recycling services have been subscribed with BFI for commercial services: (E)
 - a) Maintain an adequate level of service for trash collection.

- b) Maintain an adequate level of recycling collection.

After the applicant has started its business, the applicant shall contact BFI commercial representative to review the adequacy of the solid waste level of services. If services are determined to be inadequate, the *applicant* shall increase the service to the level determined by the evaluation. For general information, contact BFI at (408) 432-1234, x-264.

- 29. **Solid Waste** - Per Chapter 200, Title V of Milpitas Municipal Code (Ord. No. 48.7) solid waste enclosures shall be designed to limit the accidental discharge of any material to the storm drain system. The storm drain inlets shall be located away from the trash enclosures (a minimum of 25 feet). This is intended to prevent the discharge of pollutants from entering the storm drain system, and help with compliance with the City's existing National Pollution Discharge Elimination System (NPDES) Municipal permit. (E)
- 30. **Solid Waste** - Prior to any permit issuance the developer shall address the following waste handling concerns: (E)
 - a) Show/describe how both recycling and trash will be handled.
 - b) Show collection areas on each floor. Separate chutes will be required for recycling and trash.
 - c) Trash need to be compacted or the number bins to be collected will increase significantly. Front load compactor (3-CYD maximum) can be placed in the enclosures areas in the garage to be collected by the BFI scout truck. Handling of compacted waste by the HOA maintenance personnel is not feasible, as stated on the developer submittal letter, since the bins will be too heavy. The Recycling waste should not be compacted.
 - d) Show the staging area for the front load bins to be collected by the larger truck. No on-street collection is permitted
- 31. **Encroachment Permit** - Prior to any work within public right of way or City easement, the developer shall obtain an encroachment permit from City of Milpitas Engineering Division. (E)
- 32. **Fees** - The developer shall submit the following items with the building permit application and pay the related fees prior to final inspection (occupancy) by the Building Division: (E)
 - a) Water Service Agreement(s) for water meter(s) and detector check(s).
 - b) Sewer Needs Questionnaire and/or Industrial Waste Questionnaire.Contact the Land Development Section of the Engineering Division at (408) 586-3329 to obtain the form(s).
- 33. **Adequate Water** - Prior to building permit issuance developer shall submit an engineering report detailing how adequate water supply pressures will be maintained. Multistory buildings as proposed require water supply pressures above that which the city can normally supply. Additional evaluations by the applicant are required to assure proper water supply (potable or fire services). Contact the Utility Engineer at 586-3345 for further information. (E)
- 34. **Plans** - Prior to any building permit issuance, the developer shall submit construction plans to and obtain necessary permits from all affected agencies, including but not limited to PG & E and Santa Clara Valley Water District (SCVWD). (E)